THE

SESSIONAL PAPERS

PRINTED BY ORDER

OF

THE HOUSE OF LORDS,

OR PRESENTED BY ROYAL COMMAND,

IN THE

Session 1843,

(6° & 7° VICTORIÆ)

ARRANGED IN VOLUMES.

Vol. XIX.

EVIDENCE

Before Lords Committees for Privileges, before The House
and Open Committees on Bills, &c.,

(One Volume.)

The subjects alphabetically arranged.

Subjects of this volume:

Fitzwalter, Marchmont, Tracy, and Townshend Peerages;
Sudbury Disfranchisement;
Jackson's Divorce, and Morgan's Divorce.

1843.
CONTENTS OF THIS VOLUME.

Note.—The Figures placed at the End of the Titles in Parentheses (104.) correspond with the Number at the Foot of each Paper; and the Figures at the End of the Lines refer to the Manuscript Paging of the Volume as arranged for the House.

FITZWALTER CLAIM OF PEERAGE.

Minutes of Evidence given before the Lords Committees for Privileges to whom the Petition of Sir Brook William Bridges Baronet, claiming, as of Right, to be Baron Fitzwalter, together with His late Majesty's Reference thereof to this House, was referred. [In continuation of No. 159. of Sess. 1842.] (104.) — page 1

MARCHMONT CLAIM OF PEERAGE.

Minutes of Evidence taken before the Lords Committees for Privileges to whom was referred the Petition of Francis Home Esquire, claiming as of Right to be Earl of Marchmont, &c. [In continuation of No. 33. of Sess. 1842.] (103.) — 113

TRACY CLAIM OF PEERAGE.

Minutes of Evidence given before the Lords Committees for Privileges to whom the Petition of James Tracy Esquire, claiming as of Right to be Viscount and Baron Tracy of Rathcoole, together with Her Majesty's Reference thereof to this House, was referred, 7th May and 18th June 1839. [In continuation of No. 46. of Sess. 1841.] (59.) — — — — — — — 171

TOWNSHEND PEERAGE.

Minutes of Evidence taken upon the Second Reading of the Bill, intituled “An Act to declare the Illegitimacy of certain Persons alleged or claiming to be the Children of The Most Honourable George Ferrars Marquess Townshend.” (97.) — — — — — — — 307 Vol. XIX.
SUDBURY DISFRANCHISEMENT.

Minutes of Evidence taken upon the Second Reading of the Bill, intituled "An Act to exclude the Borough of Sudbury from sending Burgesses to serve in Parliament." (107.) - - - - - - - - page 501

JACKSON'S DIVORCE.

Minutes of Evidence taken upon the Second Reading of the Bill, intituled "An Act to dissolve the Marriage of William Oliver Jackson Esquire with Georgiana Maria Jane Jackson his now Wife, and to enable him to marry again; and for other Purposes therein mentioned. [In continuation of No. 225. of Sess. 1842.] (33.) - - - - - - - - 567

MORGAN'S DIVORCE.

Minutes of Evidence taken upon the Second Reading of the Bill, intituled "An Act to dissolve the Marriage of Herbert Morgan Esquire, a Lieutenant in Her Majesty's Fifteenth Regiment of Hussars, with Elizabeth Morgan his now Wife, and to enable him to marry again; and for other Purposes therein mentioned." (159.) - - - - - - - - 569
Die Lunæ, 8° Maii 1843.

The Earl of SHAFTESBURY in the Chair.

The Order of Adjournment was read.

The Minutes of the last Committee were read.

The Counsel and Parties were ordered to be called in.

Mr. Solicitor General and Mr. Pattison appeared as Counsel for the Claimant.

Mr. Kelly and Sir Harris Nicolas appeared as Counsel for Sir Hugh Hume Campbell of Marchmont, Baronet, in opposition to the Claim of Francis Home, Esquire.

Mr. Attorney General appeared on behalf of the Crown.

Mr. Pattison, having stated that he did not desire at present to adduce further Evidence in support of the Claim, was directed to sum up the same.

Mr. Pattison stated, That he had understood that the Committee was appointed for the Purpose of receiving the Evidence to be tendered on behalf of Sir Hugh Hume Campbell, and in consequence of this had not prepared himself to sum up.

The Counsel were informed, That their Lordships felt that they must adhere to the ordinary Practice of hearing the Case for the Claimant summed up before the Case of a counter Claimant, or a Party opposing the Claim, was heard; and that the Day having been appointed he must avail himself of the Privilege or forego it.

Mr. Pattison was heard to sum up the early Part of the Evidence.

Mr. Kelly was directed to submit to the House any Observations he had to offer in opposition to the Claim.

Mr. Kelly, having commenced his Opening of the Case of Sir Hugh Hume Campbell opposing the Claim of Francis Home, Esquire, and having stated that a great Variety of Objections presented themselves on the Proof adduced by the Claimant, was directed to address himself to the Case in Sections, and was heard to observe upon the Pedigree of the Homes of Wedderburn, set out in Page 59 of the Case of Sir Hugh Hume Campbell, and to open the Evidence he proposed to adduce in relation to the same.

(108.) 5 E

[From (35.) of 1842.]
Then Mr. WILLIAM FRASER was called in; and having been sworn, was examined as follows:

(Sir Harris Nicolas.) What do you produce?
I produce a Letter from Mr. Ninian Home of Billy to the Lady Wedderburn.

From whence do you produce it?
From the Charter Chest of Billy.

What is the Date of it?
The 9th of December 1720.

The same was read as follows:

No. 12. Madam,

Edinb' 9th Decemb' 1720.

I am truly grieved for George his unaccountable carriage for it seems he will have his humour with all hazards however he shall not find his interest in behaving so. The sooner you are mistress of your contract of marriage and infelment the better and I do not incline you should delay calling for ym and I presume you should insist upon his doing something immediately towards repairing the house if he intend reallie to do what he wryts for if it be delayed the next summer will go over also And y'for it will not be amiss you put him to declare himself as you did with respect to the lads and if he refuses we must do the best we can. The reason why I am for putting him to it is that should I proceed to do anything without him he will pretend his offer and friendship was slighted and I desire to shun giving him that pretext and you may wryt that if he be disposed in earnest to do you y' kindness its fit he should do it immediately and if not beg of him to declare himself y' you may think of some oy' way and I do assure you the tyme is far gone already for if it be not set about presently it will not be got finishd this summer.

The state of my health is much as befor. The cough continues still. I give your lâps hearty thanks for your kindness and must own y' I am not so ease in my own mind any wher from my own house as in yours. Tell ffrankie I am glad to hear his fâr is pleased with him for so David wryts and assure him I shall be mindful of his lances and anything els he needs. Thess should have comed out with the carier if I had not been afraid of his losing y' because so small a thing your good frind and neighbour at a bottle of wine last in Steels as a gentleman in the company told me next day said it was a very strange thing y' the coûrs for ought he heard had given no directions about Wedderburn's estate for his part he did not envy any favour was shown to any person only he could not comprehend how y' came not to appeal the lords sentence in the case of Whitfeild and not medle w Wedderburn tho' appeal'd qrby he pointed as if I had a way of manadging ym y' none els had.

I am Madam
Yo' lâps most humble servant

NIN: HOME.

To

The Lady Wedderburn

att Wedderburn

This.

Cross-
Cross-examined by Mr. Solicitor General.  

Did you receive that at Billy?  
No; I got it from Mr. David Milne, Advocate, who is the Judicial Factor on the Estate of Billy.  
Where did he deliver it to you?  
In his House, No. 10, York Place, Edinburgh.  
The Counsel being asked for what Purpose this had been put in, Sir Harris Nicolas stated, That it was to prove that George Home went to America.  

Mr. Solicitor General submitted, That this was not Evidence, not having been brought by the Witness from the Charter Chest, or delivered to him at the Place of Deposit.  

(Sir Harris Nicolas.) When Mr. David Milne gave this to you, had he the Box before him?  
He had the Charter Chest before him at the Time. He is the Judicial Factor on the Estate, under the Authority of the Court of Session.  
He gave it to you from the Charter Chest?  
Yes; and marked his Initials upon it at the Time.  
The Counsel being asked how this applied, Mr. Kelly stated, That it was in support of his Case; that George Home had quarrelled with his Family, and that that, and not his Decease, was the Reason for his having been excluded from the Settlement made in 1733; and that he was instructed to prove, that George Home had gone to America, and that Children of his were living in America at a late Date.  

(Sir Harris Nicolas to the Witness.) What do you next produce?  
I produce a Letter from George Home, dated Rappahannock River, in Virginia, the 20th of June 1723, addressed to Mr. Ninian Home of Billy, at his Lodgings for against the Magdalen Chapel in the Cowgate, Edinburgh.  

(By a Lord.) Is there any thing that identifies this Letter?  
There is an Endorsement on the Back in the Handwriting of the late George Home of Paxton: “Letters from George Home, Second Son of George Home of Wedderburn, from Virginia, in June 1723; mentions his Uncle Francis's Death.”  

(Mr. Solicitor General.) You do not state that from your own Knowledge, that it is the Handwriting of George Home of Paxton?  
I am well acquainted with his Character of Handwriting from other Letters I have seen, and I have not a Doubt that this is in his Handwriting.  
When did he die?  
He died in or about 1820.  
You mean to say that he wrote this previous to his Death in 1820, indicating the Person by whom this was written in 1723?  
Yes.  

Mr. Solicitor General submitted, That this was not Evidence, there being no Evidence of Handwriting, nor any thing to identify it with the
Mr. W. Fraser.

the George Home supposed to be the Author, and the Endorsement having been made by a Person who had died so late as 1820, and that the Contents of the Letter could not be referred to to make it Evidence.

The Counsel were informed, That, it appearing to have been written by a George Home at so very remote a Date, and being found in the Possession of a Member of the Family, the Contents of the Letter might be referred to to prove the Identity of the Writer.

The same was read as follows:

No. 13.

Sir, Rappahannock River, June 20, 1723.

We had no sooner landed in this country but I was taken immediately wth all ye most common distampers ye attend it but ye most violent of all was a severe flux of wth my uncle died being the governour's factor att a place called Germawna in the upper parts of ye colony whom he berried their and put pails about his berrial place wth is not very common in ye country I went & saw it as soon as I was able to ride Ys distemper brought me so low in a very short time ye I was scarce able to walk however I was obliged to tend ye store for all my being so ill till we had done purchasing tobacco for ye ship's loading wth took me about six weeks when I was so much out of ordre ye I was obliged to go to Williamsburg by water where I met wth D Brown who I suppose gave you an account last year of my condition He declared to my selfe after he had almost cured me of ye flux ye he did not expect I should have lived. I waited on ye governour ye day after I went to town & delivered ye Spotswood's letter He was seemingly very kind to me & talked to me very friendly but he told me it was out of his power to do any thing for me he being put out of his place and he had so many wth yth that he was obliged to put away some of ye whom he could best spare then q'to do I could not tell however I advised wth D Brown who was of ye opinion I should return home as soon as I could What little money I had I was obliged to spend it at Wüsburg the time I was their sick wth was about five weeks indeed ye D took nothing for my druggs All that comes to this country have ordinarly sickness at first wth they call a seasoning of wth I shall assure you I had a most severe one when I went to town I got but very little for my store keeping for all ye wth went to pay my passage for when ever my cosen John Watson at Port Glasgow told the merchants there they you had written to him was the occasion of my going away so hastily they would not allow me to go but to come home again and they sent to Whithaven (because we were driven in their by stress of wather) to desire our captain to send me home but he proved so much my friend when he saw me so fond of going (for he was always very kind to me) that he got me into an other ship and I was to keep ye store for my passage of wth I was very glad & accepted of it so ye you may know by ye I could be but very poor in purse & I did not know q't hand to turn my selfe to for I could get no bussness for unless one have very good recommendation there is no sort of bussiness to be got in ye Indian country wherefore I would have traveled farer where I was informed I would have been better if I could have got any money but this is ye worst place for ye I could have pitched upon for there is so little in ye country ye I believe a great many of ye does not know it if they saw it only They make a parcill of tobacco wth they make
make to buy themselves cloaths and makes it to go from one to another innsisted of money and that is all they seek after here so y't if nothing fall out better for me next year if it be possible for me to get a little money & cloaths together I design for farrer abroad either to Jamaica or y't West Indies which ever of them I can get y'est best accounts of I thought to have gone to New York little after I came here when I found so little encouragement here w'h is not far from y' place but I could never be worth so much as to carry me it being very dear traveling ytopics way I hear my brother Patrick is there surgion of y' Grayhound man of warr lying on y'station.

M'r Petter Chambers has been very kind to me in y' place in assisting me w'h several necessaries which I could not want & which it had been very hard for me to get unless he had assisted me such as shoes & stokings for ever since I came into y' country I have never gained any thing for my selfe unless it be sometimes a small parcill of tobaco w'h I get for writing. Every thing of cloathing is most unreasonably dear here it being three times as dear as in Scotland so y't y't is y' great'st I am att.

I have not my halth very well in y' country as yet but however I have it much better then I had it last year only I am now and then trobled w'h y' fever & ague w'h is a very violent distemper here This place is only good for doctors & ministers who have very good encouragem't here.

I must own I think it the hight of impudence for me to write to you w'h was the occasion of my not writting last year but having incrotched so far on your good nature formerly and still have found you to be my very well wisher I hope you will Excuse me for tho' at that time I did not adhere to your good advice yet now I see my folly and I wish to God I had given more ear to you and less to some others. It had been better for me and many a time now it makes me melancholy to think of my follies and despising my best of friends advice which you have always been wherefore dear s' let this be my excuse.

I designed to have writtte to my mother but after I bethtought with my selfe how much I had disobliged and how far I had been out of the way to her who I may now say (if I had but considered it right at that time) was the best of mothers to me for which I pray God and she may both forgive me which as long as I am on this side of time I am obliged to pray for and it makes me that I shall never forget the verse which I remember I learned long agoe which was

"O mihi præteritos referat si Jupiter annos."

Neither can I have the impudence to send my duty to her unless you will be pleased to give it and to interceded for me but you have interceded there for me so often that I can scarce desire it and if I were to serve you on my knees while I lived it would scarce be a resemblance for all such favours which I have received from you I have yet another favor to ask of you which is that you will be pleased to let me hear from you how you and all friends are. I stay in the upper part of Essex county on Rappahannock river If you please to write let it be directed to Mr. Chamberses care who will forward it to me He lives on the same river but farrer down. I desire you will be pleased to

(103.)
Mr. W. Fraser.

To give my duty to all your family to my grandmother my aunt to
M't Home and all my brothers And I am and allways shall think
my selfe

D'r sir
your most humble and
obliged servant to

G. Home.

* A Word torn
away after "to."

Virginea June 20 1723.

To Mr Ninian Home of Billie att his
lodging forgainst the Magdalen
chaple in the Cougare.
Edinburgh.

(Sir Harris Nicolas to the Witness.) Do you produce another Letter
of George Home ?
I do.
What is the Date of it ?
The 20th of June 1723.
To whom is it addressed ?
To Mr. James Home.
Did you receive this from the same Repository ?
Yes; it was put up with the other. This appears to have been
written to the Son of the Person to whom the other was addressed.

The same was read as follows :

No. 14.

Dear Jamie

Virginea Rappahannock River June 20. 1723.

I would have writtn to you last year but I always delay'd it till
I saw if I could get in to any bussines w' th made delay it so long
till all y' shipping were gone & besides y' having so very highly dis-
obliged your father who I find now to have been my best of friends
I could not write to any unless to him which I could not have y'
confidence to do tho I have takne it upon me y' year for I cannot let
my selfe think but he is still my very well wisher & if I had takne
more of his advice then I did it had been more to my advantage then
I can mention I find there is nothing to be got here without very
good recommendation Tho mine was good yet it did me no manner of
service because just as I came in to y' country y' go: lost his place &
another came in not long after but I thank God I make a shift to live
& y' is all I cannot get a pint of good topany here to drink your
halths for all our drink here is water & sometimes rum but y' is very
dear & very little mony to buy it Cloaths and linnin are very dear
here in y' Indian country yea I truly think y' three times as dear as
at home tobasco is all y' commodity here I have had but very ordinary
halth in y' country as yet especially last summer and fall but I begin
to take a little better with y' place w' th I suppose you will hear from
your father for I have given him a full accompt of it I belive indeed
I should have died if D'r Brown had not stood my friend att Williams-
burg from which place I am now at a great distance above an hundred
miles I hope I shall hear from you with the first shipping and direct
for me to y' care of Mr Petter Chambers on Rappahannock river
Virginea I desire you will give my service to my friend Hendry
Scrimsiour
(385)

Scrimsiour and Dickson M" Helen & May Rentons and all other friends and I am

Mr. W. Fraser.

D' Jamie

Your most humble

and obliged servant

G. Home.

I desire you may not forget to give my service to M' George Home and tell him I shall be very glad to hear from him.

To M' James Home sone to

M' Ninian Home of Billy att

Edinbrough.

The Counsel being asked who was the George Home referred to in this Letter, Mr. Kelly stated, That he was informed that Ninian Home had a Son named George; that he was not at present in a Situation to prove that Fact, but that Inquiry should be made against a future Day.

Mr. Kelly prayed, That he might have an Opportunity of cross-examining Mr. George Home, who had been examined in a former Stage of this Proceeding, but had not undergone Cross-examination.

Mr. Solicitor General stated, That Mr. George Home was in attendance, and ready to answer any Questions which might be proposed.

(Sir Harris Nicolas to Mr. Fraser.) Do you produce certain other Letters? I do; I produce a Letter from Mr. Francis Home, Advocate, to the Reverend Ninian Home, Minister of the Gospel at Sprouston, dated the 15th of April 1717.

From whence do you produce that? From the same Repository.

The Counsel were informed, That Mr. George Home being in attendance, it might be more convenient to suspend the Production of these Letters, and to proceed with the Cross-examination of Mr. Home.

Then GEORGE HOME Esquire was called in; and having been sworn, was cross-examined as follows:

(Mr. Kelly.) You have been examined as a Witness in this Case? I have.

You are the Brother of the Claimant? I am the only Brother now alive.

In the Event of your Brother dying without Issue, supposing this Claim established, would you be the next in Succession to the Earldom, Honours, and Dignities? Yes.

(108.) Has
Has your Brother any Issue?
He never had any Issue; he was married, but his Wife is dead.
How old is he?
He is in his Fifty-seventh Year.
Is his Wife still alive?
She died Two Years ago.
You stated, in your Evidence, that you were acquainted with the late George Home of Paxton and Wedderburn, and you then stated a Conversation you had with him?
Yes.
What Relation was he to you?
Mr. George Home of Paxton and my Father were Second Cousins,—Cousins once removed, as near as I can trace it. Mr. George Home was the Son of Isabel Home, the Second Daughter of George Home of Wedderburn, I think the Tenth in the Pedigree; my Father was the Grandson of Francis Home, the Brother of George Home of Wedderburn, the Tenth in the Pedigree.
That Conversation you say took place in 1809?
Yes.
Where?
At Wedderburn House.
Where he lived?
Yes, one of his Residences.
How long did you stay at Wedderburn House upon that Occasion?
I cannot recollect whether it was Two Days, or Three, or One. I think it must have been either Two or Three Days. I was going to Sea, and was sent out on a Visit to my Relations from Edinburgh.
Had you become acquainted with this Gentleman before that?
I had seen him, I think. I cannot be positively sure whether I had seen him before or not. I had seen his Aunt, Miss Jane Home, with whom he lived.
I presume you had very little Acquaintance with him till that Time?
No Person of Thirteen can have a very extensive Acquaintance with a Man of Seventy-five; but I had seen Letters of my Father, exchanged with him.
You rather think that you had seen him before?
I may; but I cannot be sure.
You stayed there Two or Three Days?
Yes.
Did you ever see him again?
Oh yes. When I was paid off from the Navy, in 1815, I saw him at Paxton House, another of his Residences; and at that Time I had other Conversations with him upon the Subject.
Did you at that Time know that your Father had made a Claim to these Dignities?
Perfectly; from my Infancy I knew that.
Do you know how he began the Conversation in which he stated that Alexander had gone abroad?
The Conversation was not literally with me; it was with his Aunt, Miss Jane Home, the Daughter of Ninian Home, I being present whilst the
the Conversation about the Family of Home occurred. Mr. Home had
had the Management of the Claim, being a Writer to the Signet, and
latterly a Clerk of Session.

How old were you at that Time?
I was then Thirteen.

Your Relation, Mr. George Home of Paxton, was quite aware that
this Claim had been made?
He was not only aware of it, but he had borne most of the Expenses
of the Researches; many of them at least.

He knew, I presume, that it was necessary to show that this Alex-
ander had died without Issue?
He knew, of course, that it was necessary to extinguish every one of
them.

In answer to the Question "Are you aware whether that he had
any Means of Information from the West Indies?" that is, whether you
were aware that Mr. Home of Paxton had any Information from the
West Indies, your Answer is, "His Brother, Mr. Ninian Home, was
Governor of the Island of Grenada; there was a continual Correspon-
dence between him and his Brother."

Yes.
Will you explain to their Lordships how it is that the Circumstance
of Mr. Ninian Home being Governor of the Island of Grenada, and
this continual Correspondence between him and his Brother, would
give any Information to Mr. Home of Paxton about the Fate of
Mr. George Home of Wedderburn?
I did not state that that gave him any Information; I merely stated
the Fact which I knew, that Mr. George Home had a continual
Correspondence with his Brother; that his Brother acquired large
Property in Grenada; that Mr. George Home succeeded to his
Brother's Property. He was murdered by the Africans in an Insur-
rection there.

Do you not know that this Brother, the Governor of the Island of
Grenada, only became Governor in 1793?
I am not aware of the Time he became Governor at all.

Do you know whether he was Governor before that?
I only know it as it is put in Sir Hugh Campbell's Case. I know
he went out, and was a little while in Grenada, and then came over
and purchased Property, and built Paxton House, and then he returned.
I believe the Family Interest got him the Governorship, so that he was
many Years there.

Do you know of his having been Governor of Grenada at any Time
before the Year 1793?
No, I do not; but I think he acquired Lands in the Island many
Years before that; in fact the Family hold them yet.

(By a Lord.) In what Island?
His Lands lie all in St. Vincent and Grenada. The Representative
of the Family came over only the other Day, who had been living on
the Estate.

(Mr. Kelly.) When was it, according to the best of your Know-
ledge, that he first went to the West Indies at all?
I have a distinct Recollection of my Father's Statement of his being
murdered. I also remember his further mentioning this: it was said
(103.)
5 G that
that the late Mr. George Home never smiled after his Brother's Death, so deeply was he affected by it.

You say he must have been in the West Indies before he was Governor?
Certainly, as a Planter; and I believe he married a Creole Lady.

Can you state how many Years he had been out?
I cannot say; perhaps Twenty Years. I think he was about Forty when he came home: and that he purchased the Property and built Paxton House.

When was that?
I cannot tell; I have spoken from my Father's Statements and the Statements of the Family.

Can you give me any Indication of his Age?
The late George Home was older than my Father; his Brother must have been born about the Year 1740; I should conceive, probably, Ninian Home was much about his Age.

Did he live in Scotland?
In Berwickshire, with his Father, Alexander Home of Jardinefield.

You say that this Statement was made to the Lady, his Aunt?
It was as much to her as to me; I think she made a Remark, (she was a very plain old Scotch Lady,) whether her Great Uncle Alexander was any Obstruction in the Way? And he said, Oh no, he was never married, and he died in the West Indies many many Years ago.

Re-examined by Mr. Solicitor General.

Do you know the Family of the Homes of Paddockmyre?
I do.

When you first recollect the Family, who was residing there?
My Grandmother, who was the Wife of my Grandfather.

What was the Name of your Grandfather?
John Home or Hume.

Do you recollect your Grandmother?
I have a sort of dreamy Recollection of once being in the House; but as she died in 1799, and I was born in 1796, it is only like a Dream; I cannot speak to it; I have a faint Recollection of her Face, but that is all.

You recollect your own Father and Mother?
Yes; I was Twenty-six when my Father died.

Did your Father and Mother live together as Man and Wife?
Always, from the Day of their Marriage, in 1783 or 1784, to the Day of my Father's Death.

(By a Lord.) Were there other Children besides you?
Yes; I had Four Brothers and Two Sisters.

(Mr. Solicitor General.) Who told you the Date of their Marriage?
It stands in the Parish Books of Coldinghame, and I have heard them refer to it.

They always lived together as Man and Wife?
Yes; at Buskin Burn in Berwickshire, a Property of their own.

(By
(By a Lord.) You never heard a Doubt expressed as to whether George Home, Esq. they were married?
Not a Shadow of a Doubt. My Mother enjoyed the Pension of a Captain's Widow, as my Father's Widow, Ten Years after his Death. They were twice married; first by the Church of England, and afterwards by the Church of Scotland.
(By a Lord.) Before any of the Children were born?
Before any of the Children were born, for any thing I know to the contrary; though I would not speak to the Family's Shame if it was after; they were all legitimate; but I have no Reason to believe that to have been the Case.

The Witness was directed to withdraw.
The Counsel and Parties were directed to withdraw.

Proposed to adjourn this Committee sine Die;

Accordingly,

Adjourned sine Die.
Die Veneris, 12o Maii 1843.

The Earl of SHAFTESBURY in the Chair.

The Order of Adjournment was read.

The Minutes of the last Committee were read.

The Counsel and Parties were ordered to be called in.

Mr. Solicitor General and Mr. Pattison appeared as Counsel for the Claimant.

Mr. Kelly and Sir Harris Nicolas appeared as Counsel for Sir Hugh Hume Campbell of Marchmont, Baronet, in opposition to the Claim of Francis Home, Esquire.

Mr. Kelly requested Permission to call Two Witnesses who held official Situations in Scotland for the Purpose of putting in Entries of Baptisms, proposing, in the first instance, to prove that Alexander Home, No. 67, who was stated in the Claimant's Case to have died without Issue, had a Son John, who was baptized on the 13th of October 1667; after which he proposed to put in the Entries of Baptisms of some Members of the Family who were adverted to in the Claimant's Case for the Purpose of fixing the Date, and of others who were not adverted to; and was directed to call his Evidence.

Mr. Pollock appeared on behalf of the Crown.

Then Mr. JOHN SINCLAIR was called in; and having been sworn, was examined as follows:

(Mr. Kelly.) What are you?
I am the Session Clerk of the City of Edinburgh.

Do you produce the Register of Baptisms for the City of Edinburgh?
I do.

(By a Lord.) Are they properly in your Custody?
They are; I am the legal Keeper of the Register of Marriages and Baptisms for the City of Edinburgh.

As Session Clerk?
Yes.

(Mr. Kelly.) Of what Date is that Register; from what Time to what Time?
The Book I hold in my Hand is a Register of Baptisms from the Year 1660 to the Month of December 1668.

(By a Lord.) The original Register?
Yes, the original Register.

(108.2.) 5 H (Mr.
(Mr. Kelly.) Will you turn to the Date of the Year 1667, and see whether there is an Entry of the Baptism of a Child of Alexander Home?

I have opened the Register at the Date 13 Octobris 1667, and there is this Entry: "Alexander Home, Son to Mr. Patrick Home, of Hutounbell, Jonet Harlay, A S. N."

(By a Lord.) What does that import?

A Son named.

You are able to state that with Certainty?

Yes.

(Mr. Kelly.) Does the Book contain a vast Number of Entries where the Fact is indicated by these Letters,—S. for "Son," and D. for "Daughter," and N. for "named"?

Yes; there are Cases where the Word "named" is written full out at Length, but more generally the Contractions are used. "A S. N. John. Witn." —

(By a Lord.) What is the Meaning of that?

That means, Witnesses. "John Bissett, Vulgar Schoolmaster."

What is the Meaning of that?

That he taught Latin.

That means Latin Schoolmaster?

Yes. "William Braide, Tailer. Vide S. E. Minute."

What is "Vide S. E. Minute"?

I presume it is a Reference to the Minute Book of the South-east Kirk Session.

(Mr. Kelly.) Is that South-east Church what is now the Tron Church of Edinburgh?

Yes.

(By a Lord.) Is your Book a Compilation from the Minutes of the different Churches?

The Register I hold in my Hand is the Register of all the Baptisms celebrated in all the Parish Churches of the City of Edinburgh at the Period referred to.

Is that the Original, or is that copied from the respective Registers of the different Parishes?

It is the Original. There are no separate Registers for each Parish.

What is "Vide S. E. Minute"?

I presume it refers to some Entry in the Minute Book of the Tron Kirk Session of the Date in question.

When a Person is baptized how is this Entry made? Is it made by a Person present at the Baptism, or how?

More usually by the Clerk at the Dictation of the Parent of the Child. Usually the Parent attends at the Office—that is the Practice at the present Day—and sees the Entry made by the Clerk in the Book.

Does he bring any Minute with him, or does he merely dictate what the Minute should be?

He brings no Minute; he tells the Clerk the Facts, and the Clerk, being satisfied of the Facts, makes the Entry.
How does the Clerk become satisfied of the Facts; does he interrogate the Party?

Yes; if he has any Doubt on his own Mind as to the Facts stated by the Party, of course he can make such Inquiry as is necessary to satisfy himself.

Is that before or after the Baptism has actually taken place?

At the present Day our Register is a Register partly of Births and partly of Baptisms; we call it a Record both of Births and Baptisms; and the Entry at the present Day may be made either before or after the Baptism.

Is it made between the Birth and the Baptism?

At the present Day it may be made at a Period before, and it may be made after the Baptism.

May that have been made before the Period in question?

No; after the Period in question. The Record is a Record of the Baptism; of course it must have been after the Baptism was solemnized.

Is it always the Father who attends?

It is at present most usually the Father who attends.

If it is not the Father, who must it be?

I have known the Mother come.

Supposing neither the Father nor Mother comes, would you make the Entry?

Provided I was satisfied that the Party who came really represented the Facts of the Case.

Were there other Entries of Baptisms on this same Day?

There are Six Entries of Baptisms under the Date of the 18th of October 1667.

Do you suppose the same Clerk made the Entries in those Six Baptisms?

The Clerk is not the Clergyman; the Clerk is the Clerk of the Register, who inserts the Entries in this Register.

Upon the Representation or Statement made either by the Father or the Mother, or some other Person upon whose Relation of the Account the Clerk making the Entry places Confidence?

Yes.

If he has a Doubt he institutes Inquiry?

Yes.

Is that Book admitted as Evidence of the Fact of Baptism in Courts of Justice in Scotland?

Most assuredly it is.

(Mr. Kelly.) Is that the only Book which contains a Register of Baptisms for the City of Edinburgh at that Period which you know of?

It is.

Is the Book very fairly and regularly kept throughout?

It is; it is a very beautiful Book.

Is there any thing which enables you to distinguish in these Entries of Baptisms in that Book between legitimate and illegitimate Children?

There is.

(By
(By a Lord.) What is the Mark that denotes that the Child is illegitimate?

The Record distinctly bears as a Fact that the Child is illegitimate.

Can you refer to an Instance?

I can. (The Book was inspected by their Lordships.)

What does S. K. denote?

South Kirk; all the Parishes were denoted in that Way.

N. W.?

North-west.

What does the D. N. mean?

A Daughter named.

Will you point out anInstance of an illegitimate Child?

Just the very next Page following that on which this Child's Birth is registered; under the Date of 17th of October 1667 there is this Entry: "James Davidson, Fornicator with Margaret Caddell, A D.N. Elizabeth. Witn. Robert Hamiltown, Tailer, John Smith and Alexander Young, Stabulars."

How do you ascertain the Fact; is it denoted that the Child is brought by its Parents?

I presume that the Person must have undergone the Discipline of the Church before they got the Child baptized, and in that Way the Session Clerk came to know the Fact.

If the Entry is simply A S. N., that imports, as far as the Session Clerk knew, the Fact that the Child was legitimate?

Certainly.

(Mr. Kelly.) And that upon the Information of his Parents or One of them?

Yes; I have known the Father come to the Office and report the Birth of an illegitimate Child, confessing the Fact. I have known the Mother do the same in my own Experience.

(By a Lord.) How should you enter it; in what Way?

We would not mention so plainly "Fornicator;" but we would mention distinctly an illegitimate Child, distinctly stating the Fact.

(Mr. Kelly.) Are there several Entries in the Book of illegitimate Children?

A great many. That immediately preceding to that which I have just read is One also of the same Description; it is also dated 17th October 1667: "James Thomson, Fornicator with Jean M'Auley, A S. N. James. Witnesses, James Craw Baxter, James Law, Precentor, and William Matthish, Brevar."

Are those the Witnesses that came to the Session Clerk?

Yes; they must have been the Persons who attested the Facts of the Case to the Session Clerk.

How many Witnesses are requisite for the Purpose of authenticating a Fact?

In those Days they seem to have varied very much; in the Entries of Baptisms of great Families a larger Number of Witnesses are put down than in the Case of Children of Persons in humbler Circumstances.
How many are there now?
We are not in the habit of recording the Names of Witnesses now; the Statement is made on the Authority of the Parent.
Do you enter on whose Authority it is made?
No; we are not in the habit of doing that now.
Have the goodness to read the remaining Entries of that Day?
The Entry immediately following the Baptism of this Child, John Home, is in these Terms: "John Scott of Barnsdale, Isabella Drummond; A D. N. Henrietta; Witnesses, James Erle of Annandale, Mr. Coline Mackenzie, Brother German to Earl of Seaforth, Lieutenant General William Drummond, and William Scott, Merchant." Those are the Two last Entries of that Day.

Cross-examined by Mr. Pattison.

You observed there is a Reference in the Entry of Home "Vide S. E. Minute"?
Yes.
That must be a Minute of the South-east Kirk Session?
Yes.
Those Two Entries bear Reference to the North Kirk; they were separate Districts?
Yes.
And the Baptisms recorded were performed in separate Kirks?
Yes.
There may be a Register of Baptisms in those Kirks?
Not a Register.
A Minute?
Yes.
That Entry bears a Reference to that Minute?
Yes.

(By a Lord.) Did you ever go to any of those Churches for the Purpose of inspecting what those Minutes were, and whether a Register was kept?
The Register ought to be in my own Possession, if in Existence. I made a Search for the Minute Book of the South-east Kirk in consequence of observing this Reference, and expecting I should be interrogated as to its Meaning, to see whether I could discover a Minute Book of the South-east Kirk of the Date in question; but I could find none. I found a Minute Book of the Proceedings of that Kirk Session, ending in 1665.

Was that the Book to which you referred as to the Facts?
It was just a Minute Book of the Proceedings of the Kirk Session, whatever they might happen to be.

(Mr. Pattison.) Did it contain Minutes with regard to the Discipline you have spoken of?
I did not look much into the Minute Book to see what it imported, not being of the Date I required; they were just the Minutes of the Kirk Session.

You say you did not look to see whether they contained Minutes of the Proceedings of this Baptism or not?
No; I did not look through them in Detail.

(103.2.)

5 I Are
Mr. J. Sinclair.

Are there not a great many Records of the Town Council in a State of great Confusion?
No, there are not; our Records are in very good Order.

There is a Room up Stairs for their Deposit?
The Records of the City are in my Office, arranged on Shelves.

There is a Room where a great many Papers are?
There is a Room where there are Papers.

Are they not Part of the Town Records?
No; I do not suppose they are, for I have the Records themselves.
You have seen the Room?
I have been in the Room often, and know it well.

Is there a Record of Burials for that Period?
That is not kept in the City Chambers; I cannot speak to the Record of Burials at all.

Do you know whether there is such a Record?
I know there is a Record kept at the Grey Friars Burying Ground, the Parish Burying Ground of the City.

Have you not a Record of them kept in your Office?
No; the Register of Church Burials is kept at the Churchyard.

Re-examined by Mr. Kelly.

You have searched, and ascertained that the Minute referred to in that Register is not to be found?
Yes, I have.

(By a Lord.) This is the Register used in Courts of Justice as Evidence of the Baptisms of that Date?
It is.

(Mr. Pattison.) Are the Witnesses there named intended to mean the Witnesses to the Baptism, or the Witnesses to the Register?
They must have been Witnesses to the Baptism, I apprehend; One of them may have attended at the Office when the Record was made, but I cannot speak to that Fact.

The Entry was read as follows:

"18 Octobris 1667.

" Alex' Home, Son to Mr. Pat. Home of Huttounbell, and Jonet Harlay; A S N. John; Wtn., John Bisset, Vulgar Schoolmaster, William Braide, Tailer. Vide S. E. Minute."

The Witness was directed to withdraw.

Mr. Kelly stated, That in Page 42 Henry Home (No. 89.) appeared to have had but Two Sons, all in dark Lines being omitted in the Claimant's Pedigree, George Home (No. 90.) and Henry (No. 98.); that, instead of there being, according to the Claimant's Pedigree, only Two Sons of Henry Home (No. 89.), he would show that Henry Home had Five other Sons, those surrounded in the printed Pedigree with the thin Black Line; that he proposed to call a Person having the official Custody of the Register of Baptisms in the Parish of Kilmadock, within which Parish the Estate of the Homes of Argatie was situated, to prove the Baptismal Register of Patrick Home (No. 92.), Alexander Home
Home (No. 96.), and William Home (No. 97.); that he would likewise produce the Baptismal Register of One or Two Persons whose Names did not appear in the Pedigree, as it might become material.

Then Mr. DANIEL STEWART was called in; and having been sworn, was examined as follows:

(Mr. Kelly.) What are you?
   Keeper of the Register of the Parish of Kilmaddock.
Do you know whether the Estate of the Homes of Argatie is in that Parish?
   Yes, it is.
Do you produce the Baptismal Registers of any of that Family?
   Yes.
Any in the Seventeenth Century?
   Yes; the Baptism of Patrick Son to Henry Hume of Argatie, on the 24th of May 1631.

The Extract was read as follows:

" On y* 24 off May 1631.
" Ane bairn baptizet to Herie Hum off Argatie. The bairness name is Paitriick Witness* Mr. Ja" Henryson Ard Muschett Ard Stewart in Down."

What next do you produce?
An Entry of the Baptism of Herie Hume, of the 27th of July 1633.

The same was read as follows:

" On y* 27 off July 1633.
" Ane bairne baptizet to the richt hono* the laird off Argaties. The bairness name is Herie Witness* Syr Georg Muschet off Burn-bank knicht Jhon Edmist off Newton M* James Henryson."

(By a Lord.) What is the Name of Herie?
   It is Henry or Harry; it is the same Thing.
(Mr. Kelly.) What is the next?
   The Baptism of Alexander, on the 23d of November 1635.

The same was read as follows:

" On the 23 of Novem. 1635.
" Ane bairne baptized to Harry Hoome of Argaties. The bairness name is Alex* Witness* Syr Kippendevie the laird Muschet and goodman of Newtone."

(By a Lord.) Is that Alexander at Length, or abridged?
   It is abridged.
(Mr. Kelly.) What is the next?
An Entry of the Baptism of William Hume, on the 25th of November 1642.

The same was read as follows:

" 25 Nov* 1642.
" Ane bairne baptizet to Harie Hume of Argatie. The bairness name is W* Witness* M* James Henrisoune M* W* Edmonstoune younger."
Mr. D. Stewart.  Do you find another Entry?
March the 12th, no Year.

(By a Lord.) It is stated that it is supposed to be 1686 or 1687; why is that supposed?
The Register is in loose Sheets, and I have them as they were handed to me when I went to the Office.
Why do you suppose it is 1686 or 1687?
There is no Date mentioned on the Sheet to which the Entries relate.
That may be the Reason for your not knowing the Year, but it can be no Reason for your supposing it to be 1686 or 1687?
That is the nearest to the other Leaves.
Do they come together in Succession?
Yes; they come in Succession after 1685.

(Mr. Pattison.) There is an Interval,—a Month's Interval, between the only other Sheet you find there and that Sheet?
Yes.

(By a Lord.) Is that Sheet next to any other Sheet in which there is a Date?
No.
How can you know that it comes in connexion with that, if it is a completely loose Sheet; what Reason have you for placing it near the Sheet with the Date of 1685 upon it, if it is a completely loose Sheet?
There are various loose Sheets, and I took the Sheet where I found it.

(Mr. Kelly.) Did you find the Book in the Condition in which it is now?
Yes.
Were these several loose Sheets in the same Part of the Book?
Yes, to the best of my Knowledge.
Are the Sheets of the same Size?
Yes, they are the same; they are the same Sheets that were handed down to me.
Do they appear to be in the same Handwriting?
Yes.

(By a Lord.) Do you believe them to be in the same Order in which they were handed down to you?
Yes, I believe they are.

(Mr. Kelly.) You find one of the Dates before and the other after the Date in question?
Yes.

(By a Lord.) 1686 before, and 1687 after?
1685 before, and 1686 and 1687 after.

The Entry was read as follows:

"March 12 George son to Harie Home and Janet Moir of Argatie Wiil David Muschet of Calzeichat & M' Geo. Cunynghame."

Mr. Pattison stated, That he admitted the Existence of that George Home,

(Mr.
(Mr. Kelly.) Do you find any other?
Yes, in 1625.

The Entry was read as follows:
"On ye 10 off Junii 1625
Ane bairne baptisit to Georg Howm The bairns name is Ro'.
Witness's W Muschet Jhon Pa'son."

(By a Lord.) The Word Son seems to be omitted there?
It is "Ane Bairne."

Does that Bairne mean Son to John Home?
"The Bairne's Name is Robert;" that distinguishes him as a Son.

What does "baptized to George Home" mean? Does it mean baptized Son to George Home?
Yes.

Like the others?
Yes.

George, Son to Henry Home, and so on?
Yes.

(Mr. Kelly.) When you find in that Book an Entry like this,—
"Bairne baptized to George Home," does it mean that the Bairne is a Son of George Home?
Yes, certainly.

(By a Lord.) Where did you bring this Register from?
From the Church of Kilmadock.

In whose Custody was it?
The Custody of the Minister and Elders of the Kirk Session, who appoint a Session Clerk or Keeper.

Are you the Session Clerk or Keeper?
Yes.

They are Papers in your Custody?
Yes.

Are they original Documents?
Yes, the original Records.

Do you make now Registers of the same Description?
Yes.

Are Registers of the same Description kept in the Parishes generally in Scotland, to your Knowledge?
There is a Register, but they are not regularly kept by any means; the Parents are negligent in coming forward to register their Children.

There is a Register kept in every Parish?
Yes.

Is that the Case in the Parishes of the City of Edinburgh?
I believe so, in every Parish now; there used to be only One Register for the whole of the Parishes, but I believe now there is a Register for every one of the Parishes.

Your Office is under the Kirk Session?
Yes.

You are a Parish Officer?
The Clerk to the Kirk Session.
By whom are you appointed?
By the Minister and Elders of the Kirk Session.
Do you know by whom the Session Clerk of Edinburgh is appointed?
I think it is by the Town Council.
(By a Lord to Mr. Sinclair.) You are appointed by the Town Council?
I am.

Are there any Persons appointed within the Limits of Edinburgh by the Kirk Session to make Registers?
No, not to make Registers; I may be called General Session Clerk of the City at the present Period in Edinburgh. It is in one Sense One Parish, and at one Period the Kirk Session of Edinburgh met as a Body and formed the Kirk Session of Edinburgh, and the Session Clerk of those Days was the General Session Clerk,—the Clerk who kept the Register Minute Book, so to speak, of the Minutes of this General Kirk Session. Then, in addition to this General Kirk Session, which met only for Purposes common to the whole City, there were so many Subdivisions, forming a Kirk Session for each particular Parish; and at the Period to which my Evidence refers, 1667, the General Session Clerk kept the Minute Books and Proceedings of each particular Session, besides keeping the other Registers of Marriages and of Baptisms for the whole Parishes conjunctively. But a different Practice has obtained at a more recent Date; I am still the General Session Clerk,—the Session Clerk of the City, and keep the Registers of the City in One Register, but each particular Kirk Session of recent Date has been in the habit of appointing One of their own Members to keep the Minute Book of their own Proceedings, those being Matters with which the Kirk Session has more properly to do.

Does that include Marriages and Baptisms?
No; the Minute Book of the Kirk Session electing the Elders to represent them in the Presbytery, and so on.
Not including Baptisms and Marriages?
No; I have the whole Care of those.

Then Mr. DANIEL STEWART was cross-examined as follows:

(Mr. Pattison.) This you say is the original Register; what Means have you of knowing that?
That is the Register put into my Possession by the Minister and the Kirk Session.
(By a Lord.) When you first came into Office was it delivered to you by the Minister?
By the Minister and the Kirk Session.
(Mr. Pattison.) Is the Book continuous, or are there Blanks in the Book?
This Book is continuous, I believe; but there are Blanks.
Are there many marginal Additions on that Book; have you looked at any Additions made in the Margin? Look at the Book, and see whether there are any Additions made in the Margin from Time to Time through that Register?
Yes; but those are Additions made when the Minute was written, at the very first, in my Opinion.

(By
(By a Lord.) Read that in the Margin, if you can? I am afraid I cannot.

(To Mr. William Fraser.) Will you read the Entry?
"Eodem die ane bairne baptized to John Mitchell merchant in Down. The bairne's name is Jonet," (that is now Janet,) "Witnesses William and George Byers."

(By a Lord.) Read the upper One?
"Eodem die ane bairne baptized to M' William Edmonstowne. The bairne's name is Mary Witnesses John Edmonstowne of Newton." The rest is illegible.

There appears to be a large Margin for some Purpose or other; these Entries have been made for what Purpose does not appear?
I have examined no Register in which there were not similar Appearances in the Register,—that was perfect; that there was not an Omission of some Kind or other.

(Mr. Kelly to Mr. Stewart.) Is there a Title Page to that Book?
Yes; it begins in 1623.

(By a Lord.) Are those Entries you read of the Home Family in the regular Text, or in the Margin?
In the regular Text.

(Mr. Pattison.) You cannot say whether that was the original Register, kept from Day to Day, or a Transcript from the Original?
I have no doubt that it was the Original.

(Mr. Kelly.) Will you read the Title?

Mr. Fraser read the same as follows:

"M' W. Edmonstowne minister

"The sessione buk off the kirke of Kilmadock containing the baptismes mairiages and actes of the sessione established by the elders of the said kirk with advyse of M' Edmonstowne minister qhas entrie yairto was upone the penult of October 1623

"And also conteninge ye particular collections sommes of monie gatherit for ye poor wth ye penalties belonging to the kirk

"Deus nobiscum quis contra nos."

(By a Lord to Mr. Stewart.) Are there other Matters mixed with the Registers?
There is a separate Book for Baptisms and Marriages, and another separate Book for the Acts of Session, that are Minutes.

Are you able to say whether in old Times they were all mixed up in One Book?
They were separate.

How does it happen that the Title of this Book includes both?
The Acts of Session are at the End of it, and the Baptisms at the Beginning.

(Mr. Kelly.) Is there any thing beyond the Title Page at the Beginning of the Book?
(Mr. Fraser.) The Title Page which I read is on a separate Leaf; there is a Blank, and then a short Title immediately preceding the Entries, which I will read.

(1032.)
Mr. D. Stewart.
Mr. W. Fraser.

The same was read as follows:

"The names of the bairnes baptizit be Mr. William Edmonstowne minister at Kilmadocke wtt. ye dait and day of their baptisms the yeir of God frome y° tyme of his entrie qlk was upon y° penult of October 1623."

(Mr. Fraser.) Then commences the First Entry.

(By a Lord to Mr. Stewart.) Show us the Title Page as to the general Acts of the Kirk Session.

Mr. Stewart pointed out the same, which was read by Mr. Fraser, as follows:

"The cumpt of y° yeirlie collections and of their distributiones with the cumpt of the penalties and how they were imploied."

Mr. Pattison requested Permission to examine a Witness of the Age of Seventy-one with reference to the Marriage of John Home of Paddockmyre, the Grandfather of the Claimant, and was informed that he might call the Witness.

Ann Price.

Then ANN PRICE was called in; and having been sworn, was examined as follows:

(Mr. Pattison.) Have you been sworn to give Evidence? Yes.
What is your Age?
As near as I can recollect, it is Seventy-one, or thereabouts.
You are a Scotchwoman?
Yes.
Did you know Mr. John Home of Coldinghame Law?
Yes.
Where is that?
It is in Berwickshire.
In Scotland?
Yes.
How did you know him?
By living in the Family.
In what Capacity did you live in the Family?
I was a Child of the Lady's own bringing up.
What Lady?
Mrs. Home.
That was John Home's Wife?
Yes.
(By a Lord.) What was her Name?
Her Name was Margaret Home.
(Mr. Pattison.) Do you know whose Daughter she was?
The Laird of Law.
Who do you mean by "Law"? Coldinghame Law?
Yes.

(By
(By a Lord.) What was the Laird's Name?
I do not know; I never heard that repeated.

(Mr. Pattison.) What was his Surname; do you know the Surname?
No; he always went by the Name of the Laird of Law.
You lived in the Family of Mr. John Home?
Yes.
Do you know whether he had any Property?
He had a Part of Paddockmire.
Near that Place?
Yes.
Where did he live when you were in the Family?
He lived always at Law House.
You mean Coldinghame Law House?
Yes.
Was he a retired Excise Officer?
Yes.
How long did you live in the House?
From the Time I was Seven till I was Thirteen.
Did they live as Man and Wife?
Oh yes.
They were respected in the Neighbourhood?
Yes; very much so.
Did all the Families visit with them?
There were none in the Place that she thought it worth while to visit.
She considered herself above them?
Yes.
Did she visit at the Clergyman's House?
Yes.
And the Clergyman visited her?
Yes.
Were they respected in the Place?
Oh, bless me, yes.

(By a Lord.) Was it ever doubted whether they were married or not?
Oh no.

(Mr. Pattison.) Did you know their eldest Son?
Alexander Home.
What was he?
He always went by the Name of Captain Home.
Why did he go by the Name of Captain Home?
That I cannot explain.
Where was he Captain?
That I cannot tell, any further than that he was with Cook.
What do you mean by "he was with Cook"?
He was with Captain Cook.

(By a Lord.) He was not a Soldier?
No, not that ever I heard.

(108.2.)

5 L
(Mr. Pattison.) Did you hear that he was with Captain Cook as a Sailor?
   Yes; along with Cook. He always went by the Name of Captain till his Death.
   And Mr. and Mrs. Home acknowledged and recognized him as their eldest Son?
   Oh yes.

Cross-examined by Mr. Kelly.

You say you knew the Wife of John Home; that is, Margaret Home?
   Yes.
   When did she die, do you know?
   That I cannot say; I was out of the Country when she died.
   When did you last hear of her as alive?
   I am sure I cannot say.
   You say you lived in the Family from Seven to Thirteen; was she living when you were Thirteen Years of Age?
   Oh yes, and for Years afterwards.
   Where did you go when you left the Family?
   I went to Edinburgh.
   (By a Lord.) How far is that off?
   Fifty-four Miles.
   Did you ever go back?
   No. I have been back on a Visit, but never to stay.
   More than Once?
   Yes; many Times.
   So that you kept up your Acquaintance with the Family?
   Yes; and have had several Letters from Mrs. Home.

(Mr. Kelly.) About how old were you, or how many Years would it be that you last heard of this Lady, Margaret Home?
   I really cannot say.
   You say she lived several Years after you left?
   Yes; and for several Years after the Decease of Mr. Home.
   Do you think she lived as late as Thirty Years ago?
   I really cannot say.
   (By a Lord.) Was she alive Forty Years ago?
   No, she was not; for I have been married Forty Years.

(Mr. Kelly.) You have been married just Forty Years, have you?
   I was married on the 3d of April the last Year of the Century.
   You were married on the 3d of April 1799?
   Yes.
   At that Time Mrs. Home was dead?
   Yes.
   How long before that did she die?
   I really cannot say.
   Where were you married?
   I was married in St. Martin's Church.
   In London?
   Yes.
How long before that had you heard of her Death?
Two or Three Years; I think it might have been Two Years; I did not hear any thing of them, but I heard of her Death.

(By a Lord.) If People are married in that Part of the Country are they married in Church?
Sometimes they are, and sometimes they are not.
Is not there a Register kept of the Marriage?
For what I know.
Is not that usual?
It is considered so; but I really cannot explain that; I know they are very faulty in registering the Children, for I could not get the Register of my own Birth.

(Mr. Kelly.) As nearly as you can remember it was about Two Years before you married that you last heard of Mrs. Home?
Yes, as far as I recollect.

Re-examined by Mr. Pattison.
Did you leave Scotland soon after you left Mr. and Mrs. Home?
No; I did not leave for Two Years; I went to Edinburgh.
From Edinburgh where did you go?
I was in Edinburgh, and came up to London just about the Time of the King and Queen of France being beheaded.
You came up in the Service of a Family at that Time?
Yes.
You remember that public Event?
Yes.
Do you know whether Alexander, the eldest Son, was married?
Yes.
The Captain?
Yes.
He was married while you were in the Family?
Yes.

(By a Lord.) He was a Sailor?
Yes; he sailed with Captain Cook, and always was called Captain Home.

(Mr. Kelly.) Were you present at his Marriage?
No, I was not.
The Witness was directed to withdraw.
The Counsel were directed to withdraw.

Proposed to adjourn this Committee sine Die;

Accordingly,
Adjourned sine Die.
Die Veneris, 9° Junii 1843.

The Earl of SHAFTESBURY in the Chair.

The Order of Adjournment was read.

The Minutes of the last Committee were read.

The Counsel and Parties were ordered to be called in.

Mr. Solicitor General and Mr. Sydney Bell appeared as Counsel for the Claimant.

Mr. Kelly and Sir Harris Nicolas appeared as Counsel for Sir Hugh Hume Campbell of Marchmont, Baronet, in opposition to the Claim of Francis Home, Esquire.

The Attorney General appeared on behalf of the Crown.

Sir Harris Nicolas stated, That Letters having been put in on a former Occasion from Ninian Home to Lady Wedderburn, he proposed to put in another Letter from the same Party to the same.

Then Mr. WILLIAM FRASER was called in; and having been sworn, was examined as follows:

(Sir Harris Nicolas.) What do you produce?
I produce a Letter from Ninian Home of Billy to Lady Wedderburn, dated Edinburgh, 22d December 1720.
From whence do you bring that?
From the Charter Repository of Billy.

The same was read as follows:

Madan
At length receive a case of lances for Frankie. If I have been long in sending y^m I have endeavoured to make amends by ye number & goodness. Hugh Paterson the surgeon chose y^m and sent y^m to me by Baillie Baird and I gave the Baillie eleven shillings sterling for y^m to give Mr. Paterson who says they are singularly good and y^m he is better provided with lances by y^m case than most masters. If you think proper to take out two or three of y^m and put two or three cheap lances in their place you may and if you do it be sure not to touch y^m with your hand lest they rust. But if Frankie be wise & use y^m well he may keep y^m all and tell him from me y^m if he carry weel & mind his business he shall want no encouragement and have better breeding than his Brother had. But if he carry as George does he will be neglected as George shall certainly be by me for his staying at ye Hirsel and keeping (108 s.)

5 M company
Mr. W. Fraser.

Company with my ladys woman is what I cannot think of with patience. When I reflect upon q't I did for him & how handsomely he was used & taken care of q't here and with how much discretion & affection your Lai's was pleased to behave towards him. You give me no account of him but I hear with regret q't he is & how he behaves. Pray let me know q't he was with you and if you had any discourse w't him I am glad truly glad to hear doctor Patr. is safe. He is come in tyme to see the execution of his comered the first mate of ye Worcester who is now condemn'd. Tell Johnie he must now think of going off at least w'in a month and I presume he wants nothing but the little money which he shall have.

I have read yours to your broy' and as to the house you could say no more. It is discreetly wryten and yet abundantly pressing. I shall not doubt of his giving you a positive answer as you desire. I admire he has neither sent your contract & infeftment nor given you an answer. I am at a loss to think q't design he has in acting such a part. If he have no mind to send y'n you furnish him w't a nicc excuse in desiring y'n may be sent not with the carrier but the first sure hand but if he wrap y'n carefully up they will come as safe w't ye carrier as by any person and y'n for you may wryt to him to send y'n by the carrier next week or if you please to cause inquire q'n Sandie Chrystie is to be here w't I suppose will be next week and give him orders to call for y'n. Give my service to m'n Home & tell her I am not able to wryt to her this night. oy'n wise I should not have neglected my duty further. I have let blood this day w't with the pain in my breast makes wryting uneasie y'n for David must excuse my not wryting this week. Give him my service and tell him I thank him heartily for all his good offices and if I live I shall be even with him. I resolve so soon as I go out to meet w't his uncle and shall take my own way to introduce a discourse about Wedderburn's papers which I understand he designs by no means to part with w't is truly hard & injurious. If you wryt to him next week I cannot think it were amiss for you to wryt that David is very anxious to be master of any papers y's either your father or I have put us together and you may add y'n I wryt I never had any paper or papers y's concerned the family as indeed as I never had nor could have y'n Sir Patf keeping all these and you may add y'n nothing will satisfy him till he get y'n and y'n you think it is hard to deny him y'n satisfaction if he get no more and y'n you wish your broy' would comply w't his desire & ease his mind so far I am able to wryt no more and y'n must defer giving you the trouble how to make a little ale for me in case I come to ye country until I have occasion of wryting again. Tell Tebie she will be most welcome to all here and will have abundance of young ladies for this night there are 4 or 5 with Peggie and very merry by y'n selves.

I am 

yo' most humble servant

Nin. Home.

Edinb' 22 Decemb' 1720.

Send Sanders his purse in w't I have wrapped up ye lances. I dare say many of the scraits are off the house with the extraordinary wynds I realie minded you q'n it blew so hard here. Let me know how the house did stand it.

Is that in your Hand a true Copy of this Letter?

It is.

The same was delivered in.

Sir
Sir Harris Nicolas stated, That he would next produce a Letter from Francis Home, in Virginia, to the Reverend Ninian Home, Minister of the Gospel at Sprouston near Kelso, dated 15th April 1717.

(Sir Harris Nicolas to Mr. Fraser.) What do you next produce? I produce a Letter from Francis Home, Advocate, to the Reverend Mr. Ninian Home, dated 15th April 1717.

From whence do you bring that? From the same Repository,—from Mr. Milne, the Judicial Factor.

The same was read as follows:

Dear s',

I make no doubt of your receaving my letter with the bill for 20 l. I drew upon you as you desired with your own letter to me returned which upon the 13 of July last I receaved aboard the Elizabeth and Ann of Liverpool Edward Trafford, commander then lying in Liverpoole harbour which came to my hand in the best season that ever any order for money did. The same day I got liberty to go a shor when I agreed with the merchants (as in my last I wrote you) for 10 l. for my freedome. With the other ten pounds I designed to have had a suit of handsom cloaths and some other necessaries but in my then present circumstances being a little imposed upon by m' Heskeyne I was obledged to take from him a piece of base blew cloath at eight shillings the yard for a cost, the waistcoat and breeches was three shillings a yard which he was to send me aboarde when made with some small necessaries and the remainder to be sent me in money. But upon the sixteen by times in the morning being surprized by ane unexpected sudden sailling was obledged to leave both cloaths other necessaries and money to undertake an American voyage with very few bodily necessaries and most of those not very sufficient or so much as one farthings worth either of gold money or credit without freinds aboard or in Virginia whither wee were bound but was obledged to make a virtue of necessity. However since my landing I have gott my cloaths which m' Heskeyne sent me by ane other vessell which I reckon with no more makeing and altogether then four pounds so that he hes still in his hands about six pounds for which I suppose he was so just as to count with you when he came down to Scotland which I understand he did some few days after my sailing. If not I hope you'll be so just to yourself and me both as to see about it.

Having sailed from Liverpoole on Monday the 16 of July upon Saturday the 21 about 8 at night our ship came to ane anchor in the Cove of Cork in Ireland when wee lay till Saturday the 28 when about ij. at night we sailed for Virginia. I was duering the voyage notwithstanding one signed obligation from the merchants concerned to those who purchased their freedomes befor sailing to the contrarie three times put in irons and so continued for some days without the least shadow of reason given either capt. or ships crew (but this was not my fate alone) A fourth time I voluntarie took them to keep my only freind and acquintance aboard John Brown out of them.

Thursday the 2nd August all the prisoners wer restricted to an English peint and a half of water the 24 hours and tuo biskets and a half but never exceeded three which was all my victualis the whole voyage and never tasted any thing else except an accidental dram and that very rarely which by chance I gott from some of my fellow prisoners who hapned to be better provied than myself. As for the beef

(1033.) which
which but very few of us had the offer of it was both so bad and extremely salt that considering the liquor I had I durst not eat it. As to our lying we were but biasely accommodated frequently been drove out of such beds as we had by the water for when ther hapned the least of a storme ther was not on dry bit aboard we had the privilege to retire to.

Wednesday 22nd August the wind blowing from south west so violently that in one minute our main mast was blown down even by the deck with our fore and mizen top mast and all carried clear into the sea. And in all probability if it had not pleased God to calm the winds all of us had gone to the bottom. Being in this distress we were obliged for two days to go wither the wind drove us until we got up a very sore sort of a main mast and two of unsufficient top masts. Upon the 27th the winds proving still cross for Virginia such of us as had purchased our freedom considering the distress of our ship and the danger we were in signed a declaration offered us by the captain of the loss the ship had sustained and gave our consents we should be carried to Barbados or any other English plantation we could first make being willing to be at terra firma we steer'd accordingly towards the south in order to make the trade winds and so for Barbados but after some days sailing the winds again proving cross to our Barbados designe and so violent because of the unsufficiency of our ship we were again driven before the winds sometimes south sometimes west and northwest and so continued till the 23rd of Sept' when the winds proving northerly and north east we were again obliged to change our resolution and to steer towards Virginia. Friday the fifth of Oct't we discovered the land about 12 a clock but being again driven off the cost it was Wednesday the 10th before we made up with the capes of Virginia. That night we dropt anchor within the bay and next morning found the Goodspeed at anchor by us aboard of which was Belcheste Ninian Broun Tho Home James Renton with several other prisoners all well and in good health who lay two or three days by us after wards they sailed furder up the bay for Marieland where they were all safe landed but can give no furder account of them. Saturday the 13th we sailed up York river and about 9 in the morning we cast anchor opposite to York town. On the 17th I was sett a shore to the town and Rott Ker Chattos son along with me as poor as my self John Broun having gone a shoar the day before.

Notwithstanding my hard treatment aboard both as to meat drink and otherways yet I never had my health better then duruing the whole voyage and am still so at present. Att my first landing as you may easily judge by what above I writ you that I had neither money nor credit neither knew how to dispose of myself or how to get to supply present craving nature I was obledged to board myself for a week at 7th and 6th tho I had no other prospect of paying then by disposing of some of the readiest of the few bodily necessaries I had along with me but my fortune was more favourable in that critical juncture for the verry next day I was supplied. Upon the Tuesday thereafter I hired a horse went up to Williamsburg 12 miles distant from York town the metropolis of Virginia where the general court of the country was then sitting and the best of the country gentry were ther for the time I immediately made acquaintances and found all of them extream civil and where I was up with the capt for the maltratment I had with my comorats got a board having given in to the governour and councill anrepresentation against him (the detail of which is needless to trouble you with.
with) which obleidged both himself and the most part of his crew to appear before the governour and court wher he was obleidged to find sufficient bail for his appearance before the British parliament to redress all the prisoners grivances and in tuo days time stood him upwards of a hundred guineas besides a vast deall of trouble and other charges I stayed att Williamsburg during the sitting of the courts wher I had occasion of converseing with the greatest and most substantiall men of the countrie untill the eight of No't when I left it and went about sixty milles furder north to the house of one colf Robert Carter on the north side of Rappahannock River in Virginia where I have been ever since and supposes may continue whil in this country seeing as yett he and I have agreed verry well and probable will continue so He is by every person yezaled to be the richest man in Virginia and hes about 800 slaves and servants and a great deall of busines so I hope I shall not be altogetherto destitute in this end of the world more then I was in the other and I meet with from him and his whol family all the civility imagiable.

I have write by the same ship (Capt. Dennison a Glesgow man commander) to M' John Spotiswood desireing he would be so kind to write to Coll. Spotiswood his near relation who is deputy governour of Virginia under the Earle of Orckney to lett him know the relation I have to his familie who in this place hes the character of a mightie fyne man I had at Williamsburg the good fortune to be in company with him but could not attack him upon the score of a relation because I could not condenscend how or what way. So I hope in case M'Spotiswood's letter from me come not to his hand yow'l acquaint him with this and desire the favour of him to write to his cousin the governour p'first desirable which favour I hope he will not refuse As also I desire you may give my most humble duty to S' Patrick and shew him I expect he will now be so kind as not to continue for ever his former prejudices and that he would use his intrest to procure from the Earle of Orckney a letter of recommendation to his deputy governour Tho att present I am in no necessity of it yett whatever may happen it can do no harm.

John Brunn is verry well and setled in Williamsburg at the desire of some of the best gentry there about he gott his freedom since his arrivell here and is in a fair way to do verry well in this place I hope Chatto will take care to send for his son Robert seeing ther is nothing to hinder him or any of us who are at our liberties from returneing home the governour havinge no instructions from court in that matter.

I question not but yow'l use your intrest with S' Patrick and M' John (to whom I have also write) that my children be taken care of but beingfullie satisfied in that as also of your care of any thing else relating to me I shall say no more Only I must desire the favour of you to see if their can be conveniently gott and sent me some good shifts and cravats with a handsom fair short wigg It would do me a singular peice of service for I have no thoughts of returneing home for a year or tıuo till I see how the world gos.

I expect by the first opportunity yow'l lett me have your return either by some Glesgow ship from whence severalls come every year into this river or otherways as occasion offers and lett me know how all freinds are and particulary what is become of my brother his son and Ayton for which I am very anxious Give my humble service to your lady the
families of Home and Wedderburn with all other freinds which would be too tedious to name. I shall trouble you no more but am your most obeidged humble servant. 

FRA. HUME.

Direct for me at the house of Coll. Robert Carter Northside Rappahannock river Virginia.

From Coll. Carters 15 April 1717.

(Addressed on the back as follows:)

To

The reverend

M' Ninian Home minister of the Gospale att Sprouton near Kelso

Teviotdale North Britain

To be left at S' Patrick Home of Renton

Advocat his lodgeings in the Parliament Closs Edinburgh

North Brittain.

Is that in your Hand a correct Copy of that Letter? It is.

The same was delivered in.

Sir Harris Nicolas stated, That having completed the Evidence with respect to the Wedderburn Branch, which was the Claimant's own Line, he was about to impeach the Evidence given by the Claimant in support of the earlier Part of the Pedigree; That his first Object was to show that Sir Patrick Hume (No. 4.) had a Second Wife, named Ellen Shaw, and that he had, besides George Hume (No. 83.), whom the Claimant had produced as the Founder of the Argaty Branch, also a younger Son, Patrick Hume (No. 102.), of whom no Notice had been taken by the Claimant: That for that Purpose he would produce an original Presentation by "Elena Schaw domina de Dyriltoun," standing infeft in the Lands of Vigorousough and others, in favour of Sir Bartholomew Bauld, of a Prebend of Vigorousough, dated penult. May 1586, to which "Magistro Patricio Hwme meo filio," that is, the Son of the Grantor, was a Witness, showing that she had a Son named Patrick.

(Sir Harris Nicolas to Mr. Fraser.) What do you produce?

I produce an original Presentation by Ellen Shaw, Lady Dyriltoun, the Widow of Sir Patrick Hume of Polwart, in favour of Sir Bartholomew Bauld, dated penult. May 1586.

From whence do you bring that?

From the Marchmont Repository.

Are you aware that Vigorousough was Part of the Marchmont Property?

I am. It has also the Seal; Part of the Seal is on the Tag yet.

The same was read as follows:

No. 17.

Venerabili et egregio viro magistro Johanni Chesholm preposito ecclie collegiate de Dunglas Elena Schaw Dña de Dyriltoun Coniücte Infeodationis
Infeodationis tivar de Wygurushauhc Bradzard cū columbario eiusd horstū ñca et piscaaquāri de Twayd & Tewyoth & vnius äuj redditus quadraginta solidorum de terris de Mordestoun Reuerēitas debitas et honores ad prebendam de Wygurushauhc cum suis ātējīs aūdicē ad meā ĭntationē āramq, admissionē pleno juī ĭntectā Dilectum meum Dūm Bartholomeū Bauld presbiterū animo non variandi seu accumulandī vobis tenē ľntium ĭnto Exorta ĭngān ĭνus Dicтом Dūm Bartholomeū ĭntatū meū in et īmōī ĭbendam sic vt ĭmītīt ĭrcipiatū & ĭmītāt ĭ īīqīq, sibi ĭferatū ac īṇ su vel procūrem suī ĭniom in realem actuālem et corporalem possessionem eiusd ĭnducai ĭ jīnstitūtī ĭnductū qū ĭnstitūtī in eaī canonice ĭndēndatū sībīq, stallum in choro & locum in cašlo ĭssignari faciātū Ac sībī ēno Bartholomeo ĭntato meo vel suī ĭns procūrisbū de vnuīs et singīls terrīs ĥdicīq ĭmīusq ĭqābuscunq ĭntegr ĭnderī ĭnstitūtī ĭncorporī ĭnto ĭnegāda. In cuius rei testimoniī sigillum meū vnaçuq mea subscrīpne māuali p tactum calami ĭntibū est ĭffixū apud S'ühlīng ĭpūlimo die mēsq Maj āno Dūq millesimo quīgenmo trigesimo sexto corā ĭjs ĭns ĭntestibus maġistro Paċcio Hwme meo filio Paċcio Cokburn Georgio Schaw et Roberto Lermouth notario puino cum diūsī aļijs

L.S.

dān ELEN SCHAW lady off dyrītoun with my hand on ye pen

(Dorno)

Presentatioune to ane prebendarie of Vigoroushauch be Helene Schaw
Peň May 1536.

Is that in your Hand a correct Copy of that Document?
It is.

The same was delivered in:

Cross-examined by Mr. Solicitor General.

From whence does this come?
From the Marchmont Repository.

How do you get it there?
Because it relates to Part of the Estates formerly belonging to the Marchmont Family; Vigoroushauch belonged to the Marchmont Family.

How do you know that?
I have seen many other Title Deeds of the Lands of Vigoroushauch; there are a great Number still in the Repository relating to the Lands of Vigoroushauch.

By what Title does this Lady profess to present?
She stood infect; that is stated in the Deed.

Re-examined by Sir Harris Nicolas.

Are you acquainted with ancient Documents?
I am. I have seen a great many ancient Documents about this (108.s.)
Period, 1586, and have had Occasion to examine their Authenticity, and of course as to their Mode of Execution. In some Cases the Seal only is attached; sometimes the Signature also, but not uniformly. The Witnesses are mentioned in the attesting Clause, but do not sign; the Act requiring their Signatures passed at a later Period.

Have you ever seen other Documents signed in that Manner, "with the Hand upon the Pen"?

'Yes; less formal sometimes; not on the Pen, but the Notary saying he had got it touched by the Party.'

(Mr. Solicitor General.) There is no Signature of Lady Dyrltoun or of the Witnesses?

The Notary writes the Signature of Dame Ellen Shaw with her Hand held on the Pen.

(Sir Harris Nicol.) Have you seen any other Documents signed in that Way?

Not precisely in the same Way, but in Substance the same; not quite so formal.

Explain the Difference?

I have seen Deeds in which the Notary signed the Name, saying he had been empowered by the Party, who could not write, having touched his Pen, and desiring him to write. This Deed appears to have been a little more formal, for it bears, after the Signature, that she had put and held her Hand upon the Pen; and the Practice at this Day in Scotland is, that where a Party is executing a Deed who cannot subscribe, the Notary subscribes for him, mentioning the Fact in the Docket that he was authorized by the touching of the Pen.

(Mr. Solicitor General.) Have you ever seen any Document of this Date, which purported to be executed by the Notary, in which the Notary did not state that he had Authority from the Party to sign?

Yes; several about that Period, and prior to it.

Is it not usual for the Notary to state that he had Authority?

It is usual now, but I have seen Deeds of that Date, and prior to that Date, where he did not state that; but signing the Name of the Party who professes to execute it.

Without stating any Authority?

Yes.

And no Witnesses signing?

No Witnesses signing, but being present. "Per tactum calami," I think, shows that he had Authority; it states, that she gets her Seal appended, and touches ("per tactum calami") the Pen of the Notary.

You would consider this an original Document?

I have not the slightest Doubt of that.

(Mr. Bell.) Have you ever seen a Document without the Signature of the Witnesses?

Oh yes, quite recently.

(Mr. Solicitor General.) What is the Indorsement upon the Back of it?

"Presentatione to ane prebendarie of Vigoroushauch be Helene Schaw. Pen. May 1536."

Mr. Solicitor General submitted, That this was not Evidence, not coming from the Presentee, in whose Possession it ought to be found, but
but from the Repositories of the Owner of the Prebendary; and that it
could not be considered as a Counterpart, but an original Document.

(By a Lord.) Were there Duplicates executed of Presentations of
this Nature at that Period?
At this early Period these Documents generally were in duplicate.
Can you take upon yourself to say that from your own Knowledge?
Yes.

(Mr. Solicitor General.) Have you ever seen a Presentation in
duplicate?
Not a Presentation, but similar Documents.
Have you ever seen a Presentation in duplicate?
I cannot say that.
Can you suggest any Reason why a Presentation should be in
duplicate?
I cannot; except for the same Reason that other Documents were
prepared in duplicate for their Safety and their Accuracy; in case of
one being lost, that the other might come in its Place.

Is that a common Thing?
It was at that early Period. There are numerous Documents for
which there is no Reason why more than One should have been
executed, except for Security.

What Sort of Documents do you refer to which were executed in
duplicate?
Instruments of Sasine. There was no Record of them at that Period,
and they were written out in duplicate.

Instruments by which Possession was given of an Estate?
Yes.
Can you state any others?
Yes; Charters.

(By a Lord.) When nothing was to be done by the Grantee?
Yes; nothing.

(Mr. Solicitor General.) You have seen Leases in duplicate?
They are generally in duplicate.

(By a Lord.) Is it usual, when they are in duplicate, to state it on
the Face of the Duplicate?
You could not tell by the Appearance of the Deed whether it
was in duplicate or not. Private Deeds, Dispositions of Property, were
frequently in duplicate too.

Have you seen Wills in duplicate?
I cannot at present recollect an Instance of a Will in duplicate in
Scotland.

The Counsel were informed, That this appeared to be reasonable
Evidence, liable to be impeached.

Sir Harris Nicolas stated, That he would proceed to the Argaty
Branch of the Pedigree: That the Claimant had stated that George
Hume, No. 86. in the Pedigree, had died before 1556: That he should
proceed to put in Three Documents to show that he was living so late
as 1562; the first being an original Discharge, dated 18th May 1561,
by Alexander Master of Erskine to George Hume of Lundies.

(108.3.) 5 O  (Sir
Mr. W. Fraser.

(Sir Harris Nicolas to Mr. Fraser.) What do you next produce?
I produce an original Discharge by the Master of Erskine to George Hume of Lundies, dated 13th May 1561.

The same was read as follows:

No. 18.

I Alex' maister of Erskin be the tenor' heirof grants me in name of Johnne lord Erskin my brüiy' to haue ressaught fra my weibelouit Alex' Hume of Hewch in name of George Hume of Lundies ye sowme of sex hundrith stks vsuale money of Scotland q' sowme pertenis to the said George and reseit in the handis of the said Alex' Hume as ane p' of ye sowmes promeist be him to ye said George for alienatouin of his landis of Bireclewch Handaxwood and Trotnaneschaw w't thair pertinentis maid to the said George his airis and assignais and promeis be ye teno' heirof to gif and delier to ye said Alex' Hume my said bruieris sufficient acquittance vpoun ye said sowme w't his obliassing yairin to keip ye samy' q' the oditionis and promissh maid and aigrreit betuix the said George Hume and Alex' Hume his sone be fulfillit or ellis I sall delier agane to the said Alex' Hume ye said sowme ressaught be me fra him as said is and that w'in ten dayis nixt eftir my said bruieris cuim'g to this castell or bur' of Edinburgh In witnes heirof I haue subscriuit yir presentis w't my hand at Ed' castell ye xiiij. day of Maji the zeir of God jai. v', and sixty ane zeiris befor thir witnes Johnne Reid of Akinheid Robert Mortoun George Hume my suandis Johnne Robesoun James Millar Alex' Hay notis w't yvieris diuers.

ALEX' ERKYN of Congrwy.

Is that in your Hand an accurate Copy of that Document?
It is.

The same was delivered in.

Do you produce an original Charter, dated the 9th February 1561-2?
I produce an original Charter by George Hume of Lundies to Patrick Hume the younger of Polwart, dated 9th February 1561, of the Lands of Vigoroushaugh, &c.

Who are the Witnesses?
The Witnesses are "Roberto Home" and others.

From whence do you bring that?
From the Marchmont Repositories.

The same was read as follows:

No. 19.

Omnibus hanc cartam visuris vel audituris Georgius Home de Lundis salutem in Dio sempiternam Noveritis me dedisse concessisse vendidisse titulos, pure venditionis alienasse et hac įnti carta mea confirmaisse nec non dare concedere vendere alienare et hac įnti carta mea qfirmare honorabili viro ac predilecto meo consanguineo Patricio Home filio et heredi apparenti Patricio Home de Polwart et heredibus suis masculis quibuscūq, omnes et singulas terras meas de Vigoroushalch cum pascitionibus eiusd' sup aquis de Twyda et Tevio terras de Braidzards cū columbario eorāq et terras de Horsemertc cū suis pertinei jaceē infra vicecōitatum de Roxburq pro quaē certa sūma pecunie mihi 8
per dictū Patriciū pre māibus grantantū et integre persoluta in pecunia numerata et in vsum meī totaliter conuersa de quauidī sumā pecunie teneo me bene cōtentū ac plenarie et integre persolutū prefātūq. Patriciū suos heredes executores et assignatos pro me meīs heredibus executoribus et assignatis tenore ēntis carte mee quītīs inde clamō imperpetuum Tenendas et habendas omnes et singulas prenōiatas terras meas de Vygorushalch cum piscationibus eiusdē sup acquis de Tweda et Tevioē terras de Bradzardē cū columbario earūd et terras de Horsmercatt cū sui pertineī dicto Patricio sui heredibus masculis et assignatis quibuscūq, de suprema ēna Regina et suis successoribus Scotorū regibus suus reginis in feodo et hereditate imperpetūū per omnes rectas metas suas antiquas et duūsas prout jaceē in longitudine et latitudine in doūbus edeficīs boscis planis moris înresiis vis semitis acquis stagnis ruiouls pratis pascuīs et pasturis molendiniis multuriis et eorum sequelis occupacionibus venationibus piscationibus petariis turbariis carbonibus carborariis cuniculis cuniculariis columbus columbariis fabrilibus brasiīs brueriis et genistiis silvis nemoribus et virgultis cū curiis et earū exitibus herezedeū bludwittē et mulierū nīchetsis cū cōi pastura libero introitu et exitu ac cū dibus aliis et singulis libertatibus cómoditatibus proficiis et asiementē ac justē sui pertineī quibuscūq, tam non nōiās quam nōiāsī tam subtus terra ē supra terrā procūl et prope ad predicē terras cū pertineī spectaē seu juste spectare vāleē quomodolibet in futūrū libere quiete plenarie integre honōrifice bene et in pace sine aliquo impedimēto revocatione cōtradictione aut obstaculo aliqualī reōdendo inde ānūtim dictus Patricius sui heredes et assignati ēscriptī dict supreme ēne ēre Regine et suis successoribus jura et seruitūa prefā terrarū meaē piscationū et columbariōrū cūm sui pertineī antedēc prius debita et consueta tantum pro omni alio onere exactione questione demandā seu seruitū secularī que de predicē terris cū sui pertineī per quoscūq, juste exīgi poterunt quomodolibet vel requīri Et ego vero dictus Georgius heredes mei et successores totas et integras prefatās terras meas de Vygorushalch cū piscationibus eiusdē sup acquis de Twyda et Tevioē terris de Bradzardē cū columbario earūd et terras de Horsmercatt cū sui pertineī dictī Patricio sui heredibus et assignatis ēscriptī adeo libere et quiete in omnibus et per ōia forma pariī et effectū ut ēmissū est contra ōnes mortales warrantabilīm acquietabilīp et ĭmippetūū defendēmp Insuper dilectis ēris Patricio Hovme Thome Lorana ac eorum cuilibet cōunctim et diuisīm balliūis mei in hac parte specialīs constitūtū salutem Vobis et vīm cuilibet cōiunctim et diuisīm preciūō et firmūō mando quīs visis ēntibus prefato Patricio vel suo certo actornato latorī ēntium sasīnam hereditariā et possessionem realem actuēm et corporālem totarū et integrarū terrarū meaē de Vygorushalch cū piscationibus eiusdē sup acquis de Twyda et Tevioē terrarū de Bradzardē cū columbario earūd et terrarū de Horsmerkett cū sui pertineī seūd teuorē ēntis carte mee illi desuper cōfecte juste habere faciatis et delibernetis sāluo jure cuilibet et hoc nullo modo omittatē ad quod faciēd vobis et vīm cuilibet cōiunctim et diuisīm meam plenariē et

irreiuo-
irreucabilem tenore ūntium cōmitto potestatem In cuius rei testimo-
niū huic ūnti carte mee preceptū sasine in se cōtineū manu mea sub-
scriptū sigillum meū propriū est appensum apud Edinburgh die nono
mensis Februarii anno Dīī millesimo quingentō sexagesimo primo
coram his testibus Alexē Home de Heūt Willemo Hoig in Vygorus-
halch Jacobo Forester Johanne Muschet Roberto Home Ḫanni
Robertsone Roberto Lauder Jacobo Miller et Jacobo Bāñatyne notariūs
publicis cum diuerū alis.

GEORGE HUME of Lundey

w* my hand.

(Seal attached.)

Is that in your Hand a correct Copy of that Charter?
It is.

The same was delivered in.

Do you produce an original Instrument of Sasine following on that
Charter?
Yes.

What is the Date of it?
The 25th July 1566.

In whose Favour is it?
Patrick Home the younger of Polwart.

The same was read as follows :

No. 20.

In Dei nomie amen Per hoc ūns publicū instrumentū cunctis patet
evidenter et sit notum q anno incarna*nis Dīīce millesimo quingentē̄
sexagesimo secundo mensis vero Julij vicesimo quinto die regniq,
serenissime et illustrissime principisse Marie Dei gratia Scotorum regine
anno vicesimo in mei no4ū publici et testiū subscriptiū ūntia psōnaliū
ostītū honestū vir Patricius Hovme balliu⁹ honorabilis viri Georgii
Hovme de Lundyes p suū sasine ūceptū pgamino scriptū sub sigilo
armorū dīct Georgii Hovme rubea cera alba impressa sigilla[u] et suā
subscribe[ne] robera[ī] accessit ad terras de Vygorushaut cum ptineū
habeū in suā manu dīm sasine ūceptū q michi notario publico subscribe[ī]
tradidit plegendū et publicandum cuiq quīd ūcepti tenor sequū et est
talis Georgius Hovme de Lundies dilectis īris Patricio Hovme Thome
Loran ac eori culibet cōnunctiū et diuisim balliūs meis in hac pte
spēalī ostītū salutē Vobis et vīm culibet gīnuctiū et diuisim preciū
et firmū mandō qus visis ūntibus ūlato Patricio vel suo certo actornato
latori pūm sasīnā hereditariā et possessionē realem actualēm et corporālē
totarū et integrarū terrarū mearū de Vygorushaucht cuiq piscationibus eiusū
super aquis de Twyda et Teuiot terrarū de Bradzardē cum columbario
earuē et terrarū de Horsmarcaē cuiq suis ptineū secundū tenorē ūntē carte
mee jili desuper confecte juste habere faciātis et deliberētis saluō jure
cuiuslibet et hoc nullo modo omittas ad q faciēn vobis et vīm culibet
cohūntiū et diuisim meū plenarē et iirreucabiliū tenore ūntīū cōmitto
ūtate In cuiū rei testimoniū huic ūnti carte mee ūceptū sasine in se
ǔtīneū manu mea subscribe[ī] sigillū meū ppmūi est appensum apud
Edin-
Edingbur<sup>g</sup> die nono mensis Februarii anno Domini millésimo quingentesimo sexagesimo primo coram his testibus Alexandro Home de Heu<sup>e</sup> Wilelmio Hoge in Vigoroushaucht Jacobo Forestar Johane Muschatt Roberto Home Johanne Roberstoun Robert Lawder Jacobo Millar et Jacobo Banyntyne notarius publicis cum diuersis aliis Post cuius quid<sup>a</sup> saeine p<sup>e</sup>cepti plectur<sup>a</sup> et publica<sup>đ</sup> eius<sup>d</sup> pia<sup>e</sup> Pat<sup>c</sup>ius Home balliu<sup>d</sup> vt supra vigore sui officii et virtute script<sup>e</sup> saeine p<sup>e</sup>cepti stat<sup>đ</sup> sasini<sup>d</sup> pia<sup>e</sup> et possessione corporali<sup>e</sup> actuali<sup>e</sup> et reali<sup>e</sup> totali<sup>e</sup> et integrar<sup>đ</sup> terrar<sup>đ</sup> mar<sup>đ</sup> de Vigoroushaucht cum piscationibus<sup>d</sup> eius<sup>d</sup> super aquis de Tweda et Tewiot terrarum de Braidizzard<sup>g</sup> cui colibario ear<sup>e</sup> et terrar<sup>đ</sup> de Horsmarkat cum suis pteni<sup>e</sup> respectibus quibus<sup>e</sup>, vt pinnit<sup>đ</sup> pia<sup>e</sup> Patricio Hove<sup>e</sup> fiio et heredi apparent<sup>đ</sup> pia<sup>e</sup> Patricii Hove<sup>e</sup> senior<sup>đ</sup> de Polwart psonali<sup>a</sup> pnti et accepta<sup>d</sup> secund<sup>d</sup> tenore<sup>e</sup> carte et p<sup>e</sup>cepti desup<sup>d</sup> sibi confec<sup>d</sup> per terre et lapide<sup>f</sup> traditionem<sup>d</sup> vt mort<sup>đ</sup> est in similib<sup>d</sup> dedit et deliverat<sup>đ</sup> salvo jure cuiuslibet super quib<sup>d</sup> omiss<sup>đ</sup> et singulius pmissa<sup>d</sup> pia<sup>e</sup> Patricii Hove<sup>e</sup> fiuli<sup>e</sup> et heres<sup>e</sup> vt supra<sup>đ</sup> pia<sup>e</sup> Pat<sup>c</sup>ici senior<sup>đ</sup> de Polwort a me no<sup>d</sup> publico subscript<sup>e</sup> sibi fieri et tradi petit<sup>e</sup> nii<sup>e</sup> sua plura publica<sup>e</sup> seu publica instru<sup>d</sup>etum seu inst<sup>d</sup>a. Acta erant hoc<sup>f</sup> super fundum pia<sup>e</sup> terrar<sup>đ</sup> de Vigoroushaucht hora decia<sup>e</sup> ante meridien vel ea circa sub anno die<sup>e</sup> mese quib<sup>d</sup> supra<sup>d</sup> pntib<sup>d</sup> ibi<sup>e</sup> Patricio Hove<sup>e</sup> fr<sup>e</sup> li<sup>a</sup>mano Alexandri Home de Mandarstoun Georgio Home<sup>d</sup> fiili<sup>e</sup> W<sup>a</sup> Home de louchtullo Roberto Vallaise Roberto Gilry et W<sup>a</sup> Hoge in Vigoroushau<sup>e</sup> cum diu<sup>đ</sup> aliis testib<sup>d</sup> ad pmissa<sup>f</sup> vocat<sup>f</sup> pia<sup>e</sup> rogat<sup>f</sup>.

Et ego Thomas Quhit<sup>g</sup> fecit Sancti Andr<sup>e</sup> dio<sup>e</sup> notarius public<sup>g</sup> qu<sup>e</sup> pmissa<sup>đ</sup> omm<sup>d</sup> et singulius d<sup>d</sup> sic ut pinnit<sup>đ</sup> dicerent<sup>a</sup> agere<sup>a</sup> ac fieret vnac<sup>d</sup> pnia<sup>a</sup> testib<sup>d</sup> presens psonali<sup>a</sup> int<sup>a</sup> eae<sup>a</sup> omiss<sup>d</sup> et singula pmissa<sup>d</sup> sic vidi<sup>d</sup> sciui<sup>e</sup> et audiui<sup>e</sup> ac in notam cepi<sup>d</sup> jdeo<sup>e</sup> hoc<sup>d</sup> pna<sup>d</sup> publica<sup>e</sup> inst<sup>d</sup> manv<sup>d</sup> mea<sup>d</sup> pr<sup>a</sup> pde<sup>d</sup> scriptur<sup>a</sup> exinde confeci<sup>a</sup> signo<sup>a</sup> n<sup>a</sup>e et subscript<sup>e</sup> mea<sup>a</sup> solit<sup>a</sup> et consuet<sup>e</sup> signaui in fidel<sup>e</sup> et testimonio<sup>a</sup> omm<sup>d</sup> et singlor<sup>d</sup> pmissor<sup>d</sup> rogat<sup>d</sup> et requisi<sup>d</sup>.

(Dorso)

Seseg wynin be Patrick Home be George Home of ye land<sup>e</sup> of Vigoroushauch.

Is that in your Hand a correct Copy of that Instrument?
It is.

The same was delivered in.

Sir Harris Nicolas stated, That the Claimant having presumed that all the younger Brothers of Patrick (No. 100.) had died without Issue, he would produce a Crown Charter to George Home (No. 86.) and Margaret his Wife, and to Patrick Hume their Second Son, and his Heirs Male, whom failing to the Heirs whatsoever of George the Father; showing that the Service relied on by the Claimant did not extinguish David, or any other younger Brothers of Patrick who may have existed.

(103.3.)

5 P

(Sir)
(Sir Harris Nicolas to Mr. Fraser.) What do you produce?

I produce an examined Office Copy of a Crown Charter in favour of George Hume and his Spouse of the Lands of Correquehornbie, dated 22d March 1531.

The same was read as follows:


Carta Georgii Hume et sue sponse.

Jacobus Dei grá Rex Scotorù omibus probis hoñibus totius terre sue clericis et laicis salutem. Sciatis nos dedisse concessisse et hac ñtì carta ñra cóñrnasse ac ad foedifirma dimississe dilectis ñris Georgio Hume de Lundeis et Margarete Erskin eius cóñugi et eorù altéri diutius viuèti in vitali redditu pro toto tempore vite eorù et Patricio Hume iforum filio secundo genito hereditarie oñnes et singulas terras subscriptas viz, triginta solidatas terrarù antiqui extentus de Correquehormby cuì pertinèni jacei in dòmino ñro de Menteith infra vicecomitatiù nùm de Perth quatuor libratas terrarù antiqui extentus de Leonach et quatuor marcatas terrarù antiqui extentus de Garrauchty cum pertinèni jacei in dominio ñro de Buchquhiddir infra vicecomitatiù nùm de Perth antedieç quequìfiq terre suprascripte cum pertinèni fuerunt Duncani Buchquhànanè de Correquehormby in foedifirma perprìps hereditarie et quas ñdem per fustem et baculù in manibus ñris apud Striueling personaliter sursum reddidit pureq, et simpliciter resignavit ac totum jús et clamèni que in eisè habuit seu habere potuit pro se et heredibus suis ñimo quìttclamuit impereturù. Tenendás et habendás oñnes et singulas prelatas triginta solidatas terrarù de Correquehormby quatuor libratas terrarù antiqui extentus de Leonach et quatuor marcatas terrarù antiqui extentus de Garrauchty cum oñibus suis pertinèni ñris Georgio et Margarete eius cóñugi et eorù altérer diutius viuèti in vitali redditu pro toto tépore vite eorù et preñto Patricio eorù filio et heredibus suis masculùs quìßcientibus legfìmis et propinquorìbus heredibus ñtì Georgii quìßcungùq, de nobìa et successorìbus ñris in foedifirma et hereditate impereturù pro oñnes rectas metas suas antiquas et diüssas pròut jacent in longitudine et latitudine in bocìs plánis morìs marresìgia vijìs semitis aquis stagnis riouìs pratis pasçua et pasturìs molendinis multìris et eorù sequelis aucupationibus venationibus pìcstationibus exceptìs pìcstationibus salmomì de Kìpper et smolitis petarisq turbarisq carbonarijs lignis lapiçidijs lapide et calçe fabrilibus bràsiinis bruerrjis et genestìs cum curìjs et eorù exitùs herzezeldis et mulierù marchetìs cum ñorì pastura liberò introitu et exitu ac cuì oñibus alijs et singulis libiritatiùs coìmditatiùs proficuis et asiamentis ac justis suis pertinèni quìßcungùq, tan nò nóïatiq qìsupra terra qìsupra terram procúl et prope ad preñtas terras cuì pertinèni spectàni seu juste spectare valeì ni quomodò-libet in futurum adeo libre quiète plenarie integre honoriçìe bene et in pace in oñibus et per oñmis scìt prèfatùs Dùcanus vel predecessorùs sui preñtas terras cuì pertinèni de nobìs vel predecessorùs ñris ante preñfàm resignationè nobìs inde factam liberìus tenuit seu possedìt tenuerunt seu possederunt reddendo ànusatìm ñtìs Georgius et Mìgareta eìius cóiùnx et eorù altérer diutius viuens et post eorù decessus preñfàtùs Patricìus eorùlius et heredés sui suprascripti nobìs et ñris successorìbus pro prerìs triginta solidatiq terrarù de Correquehormby sùmam quatuor librarù sexdecìm solidòri et octo denarioù monète currentìs regni ñrì ad duos ñài termìs cósunetìs festa viz. Penthocostes et Sancti Martinij.
Martinij in hyeme per equales portiones ac pro preditis sex marcatis terrarum de Leonach summam duodecim librarum monete predite ad termos suprascriptos et pro pronoatatis quatuor marcatis terrarum de Garrachty summam octo librarum monete predite ad termos suprascriptos cum maritis solitis et consuetis sedem tenore antiquarum cartarum et infeodationum atque Duncani sub magni sigillo auro coro nobis desuper ostenaet et producet nolite fedisdime ac perimplendo et observaui residuum punctorum statutorum articulorum et coditionum in dictis antiquis cartis et infeodamentis specificat in olimus secundum tenore earundem in cujus rei testimoniis huic sunti cartae ade magni sigilli non apponi precepimus. Testibus vt in aliis cartis eos similes date precedent. Apud Striueling vicecimo septimo die mensis Martij anno D[i]j millesimo quingentesimo primo et regni [ri] anno decimo nono.

Extracted from the Records in Her Majesty’s General Register House, upon this and the Three preceding Pages of stamped Paper, by me one of the Keepers of these Records, having Commission for that Effect from the Lord Clerk Register.

GEO. ROBERTSON.

Is that in your Hand an accurate Copy of that Document?

It is.

The same was delivered in.

Sir Harris Nicolas stated, That the Claimant having inferred that David Home (No. 101.) had died in the Lifetime of his elder Brother Patrick (No. 100.), because if he had survived him he would have taken the Lands of Correghormbie, he proposed to show that that David was sentenced to be hanged for Treason in 1584, Twelve Years after the Death of his Brother Patrick.

(Sir Harris Nicolas to Mr. Fraser.) What do you produce?

I produce an examined Office Copy from the Records of Justiciary of Scotland, of the Trial and Sentence of David Home of Argaty, dated the 8th of December 1584.

(By a Lord.) What was his Offence?

Treason.

The same was read as follows:

For the tressonable reftig of Ires & intelligence frum his bienes trato in passing & repassing to yá betuix Ingland & Scotland. Content et suspeñ & forfait and the sentence of forfaitour pronounced.

Curia iustiss S.D.N Regis tenta in pretorio de Ed' octauo Decembri anno 1584 per magistrum Joannem Grahame iusticiarii deputatum

Intrañ

David Home of Argatie.

Dilaitit of ye tressonabill hauing intelligence fra Johnn suymte erle of Mar David suymte gmenader of Dry-bur' o' solane lords trato declarit in parliamet in ye ressait of Ires fra thaim at ye leist ye ane or other of yame and specialie fra Patrick Home his broder sone 'suito' to Johnn suymte erle of Mar 'lijk' Ires he rassavit fra Robert McWillie quhome he ressauit in his hous in passing & repassing to yame in Ingland 'smittit in ye monethis of July August & Septebér last bypast

Persewaris
Persewaris
Mr. Dauid Magill aduocat
Assisa

-Chă George Dundas of yat ilk
Charlis Murray of Cokpule
Mathow Stewart of Bavelaw
Robert Grahame of Knokdoliane
George Home of Aytoun

Gordoun of Petlurg
Patrik Creytoun of Lugton
George Craw portion of Restoun
George Smyth burges of Ed
Andro Aytoun broder to ye laird of D&mure
James Inglis burges of Ed
Henrie Quhyt cordiner yair
Alex’ Thomesoun burges of Ed
Johnne Moffett burges y
Edward Johnnestoun burges y

And immediatie aftir the chesing sweiring and admitting of ye foirsaid personis of assisys the said Dauid Home being accussit be ditay oppinlie red in ëns of ye said justice deporty off ye crymes aboue writtin thay remouit altogidder fur of court to ye assisys hous quhair eftir chesing of ane chancellare thay ressonit vpoun ye haill poyntis of ye said ditay and eftir lang ressonig and mature deliberationoun had thairof thay reentirit agane within ye said court quhair yai be yair delyuerance pronüeit be ye mouth of George Dundas of yat ilk chancellare of ye said assisys făd the said Dauid Home to be culpabill yllit of soe’ sou’ne lords

and cofïict in contrauenig of ye acts of parliamët in ressait of ane boy callit Rob McWillie and concelung of ye Ire send be hï and schawi be Jo* Ranye send fra Patrik Home out of Ingland and ressaung comendationis fra the abbot of Drybur fra Ingland conforme to ye said Dauids depositiones subscuryt w* his hand lyke as alsua ye said Dauid wes fundin to be clene and acquit of ye rest of ye ditay and y*foir ye dome of foirfalto was pnüeit agains hï be A’dro Lyndsay dépster y’ ye said Dauid suld be tane to ane gippet at ye croce of Ed & y* hâgit q’terit âd drawd as ane tratoâd all his ëlds takc stedigc rowmes possessionis âd guidc to be eschete to ye kigc vee.

I Depute Clerk of Justiciary hereby certify that what is contained on this and the Three preceding Pages is faithfully extracted from the Books of a Journal or Record of the Court of Justiciary preserved in the Office of Justiciary in the Register House, Edinburgh. Dated 1st March 1843.

C. Neaves.

(Sir Harris Nicolas.) Is that in your Hand a correct Copy of that Document?

It is.

The same was delivered in.

Mr. Kelly stated, That he proposed to put in a Document to show that George Home of Argaty (No. 86, in the Pedigree of Sir Hugh Campbell) had a Grandson, Alexander Home (No. 99.), not at all introduced into the Pedigree or Case of the Claimant: That the Claimant had obtained from a Gentleman of the Name of Mr. Binning Home, the Representative of the House of Argaty, Twenty-two Deeds relative to the Genealogy and Pedigree of that Family; that of those Deeds
Deeds only Seven had been adduced in Evidence, and were now on their Lordships Table, but the Remainder had never been produced: That One of those Deeds contained very important Evidence relative to the Family of Argaty, proving the Existence of One Person at least, whose Existence therefore must have been within the Knowledge of the Claimant, but who was nowhere introduced into his Pedigree or Case: That he believed that others of those Deeds contained the like Evidence, or at all events very important Evidence, which was thus before the Claimant, but not before those who resisted his Claim, and which it was highly important should be presented to their Lordships: That he had the Authority of Mr. Binning Home of Argaty, the Proprietor of those Deeds, whose Father had entrusted them to the Claimant, for requiring their Production; that he desired to have an Inspection of those Deeds, and to produce such of them as might be material to the Case of Sir Hugh Campbell.

Mr. Solicitor General stated, That the Claimant could not give up the Deeds, having received them from the Owner of the Estate; but that he had no Objection to Sir Hugh Campbell seeing them.

Mr. Kelly stated, That they had an Order from the Owner of the Estate to receive them.

Mr. Solicitor General stated, That the Agents for the Claimant were ready to permit the Inspection and Production of such as might be considered necessary to the Case.

(Mr. Kelly to Mr. Fraser.) Do you produce the Document I have referred to?

I do; it is a Charter by George Home of Lundies in favour of "Alexander Home nepoti meo;" it is undated and unsigned, and appears never to have been executed; the Subscription Clause is incomplete.

(By a Lord.) What is the Date of it?
There is no Date to it, but from the Character of the Handwriting, and the general Appearance of it, I take it to be about 1550 or 1560.

(Mr. Kelly.) Is there any thing in the Character of the Handwriting which enables you to fix that Date from your Knowledge of the Handwriting of that Period?
Yes; the Formation of the Letters and the general Character of the Handwriting lead me to that Conclusion.

(By a Lord.) How are the Parties described?
"Georgius Home de Lundies" is the Grantor to Alexander Home, "nepoti meo," of Two Tenements of Land in the Burgh of North Berwick.

Mr. Bell submitted, That this was not a Document of any Validity; that the Omission of the Signature might be from the Discovery that the Facts stated were not correct; and that it would not be effectual for any Purpose.

Mr. Kelly submitted, That it was a Document which should be received, subject to any Observation which might be made upon it.

(By a Lord.) From whose Custody is that produced?
From the Marchmont Repository.

(108.A.) 5 Q That
That would have been the proper Custody if it had been executed? Yes.
The Counsel were informed, That it appeared to be some Evidence, being found among the Papers of the Family.

Mr. Bell submitted, That it was not the proper Custody relating to the Argyat Family.

(Mr. Fraser.) Argyat is a Cadet of Marchmont, and the Earl of Marchmont took a great deal of Interest for different Members of the Family when they were young; he was Chancellor of Scotland, and forwarded their Interest, and looked after their Papers; that is stated in his published Correspondence.

(Mr. Kelly.) Did the Lands of North Berwick fall into the Marchmont Family? I believe Part of them did.

What do you know of the Fact of the Lands of North Berwick having come to one or the other Branch of the Family? Alexander Home (No. 77.) had the Lands, and was described of "North Berwick."

(By a Lord.) How does that appear? From the Minutes of the Evidence; I can turn to the Page.

The Counsel were informed, That this did not appear at present to be Evidence coming out of the Possession of the Homes of Marchmont, and not of Argyat.

Mr. Kelly withdrew it for the present.

Sir Harris Nicolas stated, That the Claimant contended that George Home (No. 90.) died before Henry Home (No. 98.), and that therefore he did not inherit the Lands of Argyat from his Father: That he would show that he did, and that he had a Brother German, David Home (No. 95.), not mentioned in the Claimant's Case: That he would first show that George Home of Argyat disposed that Estate to his immediate younger Brother, Major John Home (No. 91.)

(Sir Harris Nicolas to Mr. Fraser.) What do you produce? I produce an original Disposition by George Home of Argyat to John Home, his Brother German, dated the 12th of October 1659; One of the Witnesses is David Home, his Brother German.

The same was read as follows:

No. 23.

Be it kend till all men be thir īnt ēses me George Hoome of Argetie here propreetare of the landes mylne and vtheris vnderwrittin ēfor ane certaine considérable soume of money payed and delyvered to me at the making heirof and of befor to the intent of thir īnts be John Hoome my brother germene and also for his disburseine mee of certaine my vrgent creditoris alreadie contented and perlyfted be him befor the granteing heirof of the qth soume of money and disburseine fairsaid graniting me weill satisffed and compleitie payed renuncieing the exceptioune of not numerate money aith of partie and all vther exceptiones and objectionnes that can or may be propouned in the contrair simplicie discharges exxoners and quyctlames him his aires and successors be thir īnts for now and ever to have sauld annalziet and disposed
disponed lykeas I be thir þñis sell annalzie and dispone to the said
Johne Hoome his aires successors and assignayes q'somever heretabile
and irredeimable but reversioune regres or redemptione or any fraction
of redemptione all and haill these my landes of Easter Neather
and Midle Argaties myyne of Argatie and mylne landes thairof
multereis and sequells of the samynye and all and haill the landes of
Easter and Wester Lundies with the manure place and fortalice of
Argatie þñlie poset be me and Marie Muschet my mother zairdes
and orchzairdes with all and sundrie the cottaries of the samynye lands
with houses bigginges zairdes of the saids haill lands rexiue and vthers
foirsaid mossë moores outhelds infeilds meddowes parks haineings with
all and sundrie easements commodities privilegdes paires pendices and
pertinentes thairof pertaining or that is knowne to appertaine to the
s't haill landes and mylne foirsaid in all the ryteous meishes and
merches thairof and conforme the anncient evidences thairof all lyand
within the paroch of Kilmadock and Æreicelome of Perthe But þjudice
and with reservacione of the said Marie Muschet hir conjunct fie and
lyfrent richt conforme to hir inseftment y’veponue and bints and obleis' me
my aires and successors with all convenient diligence and befor the
first day of December nixtocs in this instant zeir of God J*vyj, fyftie
ynye zeire to dwelie valuable and sufficientie inseft and sase the said
Johnne Hoome and his foirsaida in all and haill the saides landes of
Easter Neather and Midle Argaties with the milne y'of and in all and
haill the saids landes of Easter and Wester Lundies cottaries foirsaid and
vthers abowe mentione with the pertinents all lyand as said is and that
be twa several chartors and inseftments containeinge preceptes of saising
that saising may follow y’vepon the ane y'of to be haldine fra me my
aires and successors in frie blenche for pay' of ane Scotta pennie at the
time of Witsunday zeirle vpon the ground of the s't landes if it beis askit
allanerie and the other of my mymedial superior or superiors thair aires
and successors my imedial superiors of the samynye also friele in all
respects as I or my predecessors held or holds the samyne myselfe and
y' either be resigna'one or confirma'one as best shall please the said
Johnne Hoome and his foirsaida and as they shall think maist sure and
expedient to be exphed vpon thair avne expens' and now as if the
saids inseftments wer past and chartors q'as shall containe ample
clausse of warrandice wer perfyted And then as now I bind and
obleis me and my foirsaida that the samyne landes mylne manure
haill paires & pendicles y'of rexiue shall be safe and frie to the s't
Johnne Hoome and his foirsaida fra all evictioneis perills and dangers
fra my avne proper fact and deid allanerie against all mortall
as law will except and as is above exceptit Lykas I have instanttie
heirwith delvered to the said Johnne Hoome the haill evidents I
have of or concerning the s't landes and mylne rexiue to be keiped
by him and his foirs q' whom I be thir þñts make and constitute
my vndoubtit & irrevocable cessioner and assignaye in & to all other
wrets relatinge to ye s't landes and vthers foirs in whose hands so ever
the be found and with power to perswe for exhibitione or othersways
y'for as accords of the law And farder I bind and obleis me and my
foirsaida to iterate and renew thir þñts to the said Johnne Hoome and his
foirsaida also oft as neid beis till they finde themselfes relevantie securit
keipand alwyes the substance of the premissès and subsequent More-
ower for the said Johnne Hoome and his foirsaida better effectuateing
of the resigna'one abowewrittine wit ye me the said Georq Hoome
to have made and constitute lykeas I be the tenor
heirof

(1035.)

Mr. W. Fraser.

Two words, probably of Argacie, torn out here.
heirof make and constitute my weelbeloweds
and ilk aane of thame coëllie and severallie my verie lau
vndoubtit and irrevocable prors actors factors and speciall earand
bearres giveand grantand and comittand to thame and ilk aane of thame
conjunctlie and severallie my full frie plaine power generall and speciall
cómand expres bidding and charge for me and in my name and vpon
my behalfe to resigne rennuc free quytclame overgiv and delyver
fra me my aires and successors with all dew reverence and humilitie
as becomes purelie and simplic be stafe and bastoune as vse is Lykeas
I the said George Hoome be the tennor heirof resigne renunces and
freile quytclames overgives and delyveres fra me my foirsaidis all
and hail these my lands of Easter Neather and Midle Argates manure
pllace y'of myyne and myyne landes of the samyne multures and sequels
y'of and all and hail the lands of Easter and Wester Lundies with
house bigging zairds orchizairdes cottaries moss moorrs outfeilds
infeilds tofstes coëxes coëxes privilegedes parties and respective pen-
dicles and ryteous pertinents y'of In the handes of the immediate superi-
or supiour of the samynge or y' successors immediate superiors of the samyne
in favors and for new infetment to be made and givane of the samynge
be the said immediate superiour or superiour and their successors immediate
superiors to the said Johnne Hoome his aires and assignaynes heretablie
and irredeemable as is afores in all dew and competent forme as
accordes actes instru and documents y'vpoune to take ask and raise
and gâllie all and sundriere other things to doe exercë and vse y'an
to the office of pror in sic cases of law and consuetude is knowne
to appertaine or that I myt doe y'in myselfe if I were personallie
present firme and stable holdand and for to hold all and q'somevor
thinges my said prores or any of thame conjunctlie or severallie in the
premises leav to be done vnder the paine of law Attoure that the said
Johnne Hoome may be the more conveniencie infet as said is I the said
George Hoome commandes and reqyres zow
or oony of zow my bailizes in that paert qjunctlie and
severallie speciallie constitute that incontinent this precept
ze pace and without delay the lands of Easter
Neather and Midle aties manure and place ylne
lands of Argaties Easter and Wester
zairds orchizairdes hail parties and privileges
successivelie & respectivelie lyand as is and their give heretablie
and irredeemable state and seasing reall actual and corporall possesione
of the samyne hail lands w'the myyne myyne lands and hail perti-
nents abowewrttine to the said George Hoome or his acturnay or
acturnayes in his name be delyverance in that or his hand bearers
heirof of earth and steane and clape of ye myyne as vse is of the saids
lands and myyne and vthers foirsaides conforme to the tennor of this
my dispositone abowewrttine in all poynets and with reserva' une and
expection une of our mother's lyfrent as is abowe exceptit and this on
naways ze leawe ondnone the q to doe I committ to yow or any of yow
cöllie and severallie my bailizes in that paert specialtie constitute my
full frie plaine and irrevocable power be the tenno' heirof consenting
this jn be insert and regrat in the buks of the bigh court of justice
or in any other judicatore books competet within this na' une of
Scotland to have the stren' of ane act & decreit in'ponit heiro that
fres & exe' of horneing may pas heirvponne on ane simple charge of
ten dayes warneing and heiro constitutes my pror promising to hald
firme & stable &c. In witnes y'of thir jn (writitane be Robert Caddell
wreator
wreator in Downe) ar subscryved be me at Downe the twelue day of
October J"v", & fyfthye zeire befoir thir witness Allex' Stewart
director of the gramar schoole at Downe David Hoome my broy' germane
Johe Lambe mer' burges of St'ling and the s Ro' Cadell

         GEORG HOME.

Jo: Lamb witnes
Alex' Stewart witnes
R. Caddell witnes
D. Hoome witnes.

Is that in your Hand an accurate Copy?
It is.

The same was delivered in.

(Mr. Bell.) From whom did you receive that?
I took it myself out of the Charter Chest of Argaty with the Per-
mission of the Proprietor, Mr. Binning Home.

Sir Harris Nicolas stated, That he would next prove that George
Home (No. 90.) was alive in 1689, having survived his Two immediate
younger Brothers Major John and Harry (Nos. 91. and 93.)

(Sir Harris Nicolas to Mr. Fraser.) What do you produce?
I produce a Document entitled, "Notte as to the state and con-
dition of vmq Harie Home of Argatie his fortoune the tyme of his
deceise in anno 1689 with the debts awand be him the tyme."

From whence do you produce that?
From the Marchmont Repository.

Can you explain how it came there?
No further than that the Earl of Marchmont took a very great
Interest in some Members of the Argaty Family, and got Charters
expede for them.

(By a Lord.) How does that appear?
It is stated in the Case from Papers in the Possession of Sir George
Rose, the Representative of the last Earl of Marchmont.

The Counsel were informed, That it appeared doubtful whether a
sufficient Basis had been laid for the receiving this in Evidence.

Mr. Kelly stated, That having been directed to proceed with the
Evidence with which he was prepared, and the Witness in whose
Custody this Document was being obliged to return to Edinburgh, he
tendered it only de bene esse, trusting that in connection with other
Proof it would become important as a Part of his Case.

The Counsel were informed, That the Document in question might
be received de bene esse.

The same was read as follows:

Notte as to the state and condition of vmq Harie Home of
Argatie his fortoune the tyme of his deceise in anno 1689 with
the debts awand be him the tyme.
The hall silver rent of the said fortune and lands was yearly two
hundreth and eighty eight pounds scots.
Item six chalder of meal and bear yearly due and payable by the
tennants and possessors of the saids lands with the burden allways of

(103.3.) the
the said heritor his paying or allowing the half of the cess and other publick impositiones due furtth y'of yearly.

Ther was due att Argaties said deceis of principall soumes due by bonds to sundry personeis his creditors bearing a rent three thousand and two hundredth pound and that besides ane annuitie of ane hundredth pounds scots payable yearly be Argatie to George Home his brother.

Six years a rent of 1240 lib. due to Ardoch ane of the saids creditors and two years a rent or y'by due for the remanent of the debts in regard the house being burnt and haill furniture andplenishing y'of irrecoverably lost through a vehement and sudden fire and the house againe rebuilt be Argatie about two years before his deceise the a rents could not be gott payed.

Ther was also restyng for timber to the house wrights sklaitis and sklaitors wages with necessaries y'unto besides what was formerly payed foure hundredth and fiftieth pound.

Money borrowed from George Home and severall other persones when Argatie was among the doctors hands at Ed' and at home and oy'ways resting of servantes fies and a great many petty accomplts six hundredth pound.

The barnes portiones provyded be Argatie to his three daughters is four thousand pounds scots, George Home his son and air being obeledged on his cost and expenses to mainent cloath and educate them.

Is that in your Hand an examined Copy of that Document? It is.

The same was deliverd in.

Sir Harris Nicolas stated, That he would next prove that Major John Hume of Argatye died in June 1670, and that Jean Drummond, his Relict, was confirmed Executrix to him.

(Sir Harris Nicolas to Mr. Fraser.) What do you next produce? I produce an examined Office Copy from the Register of the Commissionary of Dunblane, now kept in the Register House Edinburgh, of the Testament Testamentar of Major John Hume of Argatye, dated the 1st of December 1670.

The same was read as follows:

No. 25.

Com' Dunblane Testaments vol. 4. p. 412. 1667—1770.

The testament testamentar fre will and inventar of the goods and geir pertaineing to vmq' major John Hoome of Argatye win the parish of Kilmadock and comissariat of Dunblane the tymne of his deceas which was in the moneth of June 1670 faithfullie maid and given vp be Jeane Drimond his relict spous erix dative decerned to him be the comissier of Dunblain vpon the daite of thir fints as ane act maid y'sant proports.

Inventar.

Imprinimis the 3d defunct hade pertaneing to him and in his possessione the tymne foris the goods and geir after speit of the value and estima'te followeing to witt ane hors with sadles bradles and remanent furnito' estimat to xxiiiij. lib. If ane ox and ane stott pynce of both xvij. lib. It tuo kye and tuo quoyes princ of them all xx. lib. It xxx. head of young & old sheip att xxvij. s. viij. f. inde xi. lib. If the sawine of sex furletts bear estimat to the thrid corne inde iiiij. bolts
(429)

ij. furlotts prucose of the boll with the fother iiiij. t. inde xvij. lb. If the sawine of tua bolls of aiits estimat to the thrid corne inde vj. bolls prucose of the boll iij. lb. inde xvij. lb. If the sawine of xij. bolls outfeild aiits estimat to the second corne inde xxijij. bolls at t. s. the boll inde lx. t. If the outinsell &c. iiij. lb.

Summa inventarij iiij. iiiij. xviij. lb.

Debts to the dead.

Imprimis the eërix declares ther wes no debts resting to him tyme foirë except half a yeares rent of Argatie & Auchlochie resting be the tennents y'of at Wisonday 1670 Extending in heall to iiij. lb. summa patet

Invent y'with viij. iiiij. xviij. li. Half is iiij. iiiij. xix. li.

Confirmatione

I Robert Bruce of Bordie comísuer of Dunblane eff lauff cita'ne &c ratifie this þnt testament &c provyding &c lykeas the së eërix hes maid faith and found James Peirson of Kippenross cau' sub^ att Dunblane the 1 De' 1670.

Extracted from the Records in Her Majesty's General Register House, upon the Two preceding Pages of stamped Paper, by me one of the Keepers of these Records, having Commission for that Effect from the Lord Clerk Register.

GEO. ROBERTSON.

Is that in your Hand an accurate Copy?

It is.

The same was delivered in.

Sir Harris Nicolas stated, That the Baptism of Patrick Home (No. 92.), a Son of Henry Home (No. 89.), not mentioned in the Claimant's Case, was proved by the Certificate produced on a former Day: That the Baptism of Henry Home (No. 93.) was proved in the like Manner: That David Home (No. 95.) was proved by the Deed produced this Morning to have been living in 1659: That the Baptism of Alexander Home (No. 96.) and of William Home (No. 97.), neither of them mentioned in the Claimant's Case, had been also proved by the Production of the Registers: That to prove that Henry Home (No. 93.) became possessed of Argaty by Dispositions from his elder Brother, Major John Home (No. 91.), and which was confirmed by another Disposition from his eldest Brother George (No. 90.), he would produce the Two original Dispositions.

(Sir Harris Nicolas to Mr. Fraser.) What do you produce?

I produce an original Disposition by Major John Home to Harry Home, his immediate younger Brother, dated 18th June 1670, which I took out of the Argaty Charter Chest, with the Permission of the Proprietor.

The same was read as follows:

Be it known to all men by thir þnt letters me major John Home of Argatie herë proprietor of the landis and others vndirwn for the singular love and respect which I have and carie towards Hary Home my mediad youngér brother and in respect of his ingadgment to me to satisfie and pay sës^ debts & soumes of money ñfor the ñch I stand bound & wherwith the landis & oy^ efter mentioned are burdeined (103.3.)

Therfoir

No. 26.
Therfoir and for sēn other weightie reasones and good considerationes wit ye me to have sold analizied and dispose lykas I be thir ṭnts sell analizie and dispone fra me my aires & assigneys to and in favors of the said Harie Hoome his aires assigneys & successors q'somevir he rèby and irredeemably but any reversione redemptione or regres All and Hail the landis of Over and Nether Argaties with the manor place houes biggins yairdis pairs pendicles and pertinentis therof and als All and Hail the landis of Lundies Eister and Wester and pertinentis therof with the miln miln landis multor' sequells and all the pertinentis therof lyand within the stewartrie of Monteth and shreßdome of Perth togidder with all and sundrie the teyndis persanadge and viccaredge of the samen togidder with all right title entres kyndnes and claim of richt wh I or my fores' anyways had have or may have claim or pretend in and to the landis teyndis & oy* abovspèit or any p* or portione of the samen And I bind and obleis me my aires and successors with all convenient diligence dewly & sufficiently to infeft & sease the said Harie Hoome & his abowvèn he rèby and irredeemably as s* is in all and hail the landis teyndis & oy* rèxiè abovdisposèd and that be our two sēn chartors & manors of holdings are therof to be holdin of me and my aires in freie blensh fenn for pay4 of one penny Scots money at Witsunday yeirdly vpun the ground of the s* landis if the samen beis requryèd allenerly and the other of the s* infettments to be holdin fra me & my aires of my imèdiam lau* superiors therof being or that shall hapin to be for the tymè sicklyk and als freilie in all reseps as I hold or may hold the samen myself and that either be resignacione or confirmacione as best shall please the s* Harie or his abowvèn and for y* effect to grant subscryve and delvery to them sufficient chartors of alienatione containing precepts of Seasing pòries of resignacione and all oy* wrytes and evidentes neidfull & requisite whenever desyred y*to and for effectuating of the s* infettment be resignacione I be thir ṭnts mak nominat & constitute and ilk one of them coñlie & sæally my very lau* vnadowbtit & irrevocable pòrs for me & in my name to resigne renunce surrender simpit overgyve and delvery lykas now as then and then as now I be the tenor heiroff for me & my abovspèit resigne renunce surrender simpit overgyve & delvery all & hail the sd* landis of Over & Nether Argaties with the manor place houèis biggins yairdis pairs pendicles and pertinentis therof and all and hail the sd* landis of Lundies Eister & Wester & pertinentis of the samen with the miln miln landis multiturs sequells and all ye pertinentis y*of rèxiè fòrìèdès lyand as s* is togidder with all and sundrie the teyndis personadge & viccaredge of the samen togidder with all right title entres kyndnes and claim of richt q'somevir which I or my abowvèn anyways had have or may have claim or pretend thereto or to any p* or portione of the samen rèxiè in the handis of my imèdiam lau* superiors therof ṭnly being or who shall hapin to be for the tymè or in the hands of ther coñissioners having power of them to receave resignaciones in y* names and to grant new infeftments y*upon in favors & for new infeftment y*of rèxiè to be given and grantit to the said Harie Hoome & his abowvèn he rèby & irredeemably as s* is in such dëw and compitent form as effeirres and y*ypòn acts & insìnnts to tak asx lift & raise protestaciones to mak and generally all and sundrie oy* things neidfull anent the premis* to doe wh I might do mysell if I wer personally present promitteñ de rato & s Which dispositione and alienacione abowvèn pòrie of resignacione abovspèit and charters & infeftments apponitit to follow heypòn togidder with ye landis teyndis & oy* rèxiè abovdisposèd to be contained y*in I be thir ṭnts bind & obleise
obleise my and my abovwëm to warrand accquyet and defend to be safe
driers & sure to the said Harie Hoome & his abovspët ferr all perrills
dangers incumbernces & inconveniences q'somevir alsweill by gone
jënt as to come at all hands & againes all deadlie and for ther furyder
& greater security anent ye premiës I be thir þënts mak & constitute
the said Hary Hoome & his abovwëm my very lawu" vndowbit &
irrevocable cessioners & assignys in and to all and sundry contracts
dispositiones chartors seassings þríories & instruments of résignatione
precepts of clare constatt & all oy" wryts & evidents of and concerning
the lands teyndis & oy" above disposed grantit in favors of me or any
of my predecessors or authors be q'somevir persone or persones or wh"ë
anywayes may be interpret or conceaved in favors of me or my abov-
specë and in and to the claus of warrandice & haill remanent heids
claus & conditiones therin specë rëxive togidder with all y" hes followed
or may follow vpon the samen and als in and to all and sundry deëts &
process of apprystone led and deduced ag" ye lands & others abovmen-
tioned q'onto I now have richt in & to the haill grounds & warrants
q'pon ye samen proceedit and to all dispositiones rights & assignationes
grantit to me y"of and in to the haill soumes of money prin"h & sheriffes
y"in exprest haill heids tenors & contents y"of claus of warrandice &
remanent clausis conditiones & obeleist rëxive y"inmentioned and in & to
all charters & infeltments following y"vpon togidder with all y" hes
followed or may follow vpon the samen rëxive and in and to all
actione instance proces & executione compitent or wh"ë anywayes
may be compitent to me or my abovspët be vertew of ye samen and
be thir þëts surrogate & substitute the said Hary Hoome & his abovwëm
in my full right title & place of the premis for now & evir which
assignatione abovementioned I bind & obeleis me & my fôrs" to
warrant to be good & valeid to the st Hary Hoome & his abovspët at
all hands and againes all deedly dispensing with the generality therof
and admitting the samen to be als sufficient & effectuall as if every
wryte & evident generally abovassigned wer particularly in ther ställ
deëts tenors & contents heirin insert & assigned therewith & with
all oy" imperfectiones & objectiones that may be proponed or allei
againes the validity of the premiës 1 for me & my abovwëm be thir
þëts dispenses for evir Lykas I have instantly delveryed to the st Hary
the haille wrytes evidents & securities of ye lands teyndys & oy"
abovdisponed to be maid vse of be him and his abovspët as y" own
proper wrytes & evidents at y" pleasoo in all tym comeing And
for the main security I am content & consent that thir þëts be insert
& regrat in the books of counsell & sessione or in any oy" compitent
reg" ther to have ye streth of ane act & dec" with feres of horening
on six dayes only & oy" neiufull in form as effeiris may pas heirvpon
and y" to I constitute
my þôrs &
Morover to my lovitts
and ilk ane of yem coëllie & sëally
my baililies in that p" specially constitute it is my will and I require you
that incontinent after sicht heirof ye pas and give hereh state and
seasing togidder with possessiione corporall actuall & reall of all & haill
the fôrs" lands of Over & Nether Argaties with ye maner place
houses biggins yardsis þës pendicles & þëntens y"of and of all & haill
the st" lands of Lundies Eister & Wester & pertinentes of ye samen with
the myln midlands multors sequells and all the pertinentes therof reëxive
fôrs" togidder with all and sundrie ye teyndys personadge and viccarage
d of the samen lyand as st is to the said Hary Hoome or to his certein
acturnay or þôr in his name bearer heirof be deleyverance of earth
(103.3.)

5 S & stone
& stone of ye ground of any p' of ye s't lands & of one handfull of corn grass or stubble in name of ye s't teyndis as vse is in ye lyke conform to ye tenor of thir þônts in all poynts and this on noways ye leave vndon the q't to do I comit to you coſli & seally as s't is my baillies in y't p' foirs' my full & irrevocable power be thir þônts In witnesses q'of (wtn be Jôn Graham wryter in Linlithgow) I have sub' thir þônt' att Argatie the eighteenth day of Junii J'n vj't. & sevinte yeres befor thir witness Robert Drumond in Kilbryd & the s't John Grahame.

Jo. Hoome.

Ro't Drumond wittnes.
J' Grahame wittnes.

Is that in your Hand an accurate Copy of that Deed? It is.

The same was delivered in.

What do you next produce?
A Disposition by George Home of Argaty to Harry Home, his Brother, of Argaty.

The same was read as follows:

No. 27.

Be it known to all men be thir þônt Ires me George Hoome of Argaty imediit elder brother and air to the deceit major John Hoome of Argaty ffor the love and respect which I have & carie towards Harry Hoome also my broy' german and in respect that the s't deceit major John Hoome be his Ifres of dispositione sub' with his hand of ye dait the eighteine day of Junii instant ffor ye caus's y'inspec sold anaziled and disposed fra him his aires & assigneys to and in favors of ye s't Harie Hoome his aires assigneys & successors q'somevir hereby & irredeemably all and hall the landis teyndis & oy't aftermentioned with ye p'tinentis y'of efterspec & bund and obleist him his aires & successors to infet & sease ye said Harry & his foirs'y'in to be holdin & with warrandice in maner y'mentionned as the said disposition mair fully proportis therfore and in fortificatione & coroboration of the said dispositione & but derogatione accumulando jura juribus mit we me to have sold anaziled and disposed lykas I be the tenor heirof sell anazilie and dispone ffa me my aires & assigneys to and in favor of the said Harry Home and his aires assigneys and successors q'somevir hereby and irredeemably but any reverseion redeemptione or regres All and Hall the landis of Argaties Over and Nether biggins yairdis orchardis pairits pendicles and hall pertinentis y'of and all and hall the landis of Lundies Elter and Wester with houss biggins yairdis moss mures p't pendicles & p'tinentis of ye sam'en topidder with the miln miln landis multors sequells & hall pertinentis y'of lyand within the stewardie of Monteith & shrefdom of Perth togidder with the teyndis personedige and vicaregede of the sam'en halld in the wth lands teyndis & oy't foirs'& the said vmq' John Hoome died last vest & seased. And becaus that I am not as yet infet & seased y'in as air to him theroof I bind & obleis me my aires & successors with all convenient diligence to purchase procure & obteine myself to be dewly and laisly infet & seased as air served & retoure to my s't vmq' broy' in the landis teyndis & oy't rexe above disposed with ye p'tinentis q'in he died last vest & seased and that be the imediit laill superiors therof and y'after with all convenient diligence dewly & valiably to infet & sease the s't Harie Hoome
Hoome and his abovspe in the same landis teyndis & oy* reëixe abovementioned and that be my two escall charters & maners of holding ane therof to be holdin of me & my aires in freie blench ferm for pay of ane penny Scots money yeilrly at Witsunday upon the ground of ye s* landis if the samen beis requyred allenerly and the oy* of ye s* infeftments to be holdin fra me & my aires of the immediat laïll superiors of ye landis teyndis & oy* foïrïis & y* aires & successors siclyk and als friely in all respects as I may hold the samen myself and that either be resignacione or confirmatione as be stalt plac the s* Hary Hoome & his abowrth & for y* effect to grant sub* & delvery to them sufficient charters of alienacione prories of resignacione precepts of Seasing and all oy* wryts & evidents neidfull & requisit whenever desyre d* to containing the warrandice efermentioned and for obtaininge of me served and retoured air to my s* vmaq* broy* & infeft & seased in ye lands & oy* reëixe abow express & expediing of ye s* infeftment in favors of ye s* Harie & his foïrïs* be resignacione I be thir ãnts make constitute & ordaine.

And ilk ane of them coïllie & seallie my very laïll vnndï & irre-vocable pfors for me & in my name to purchase procure & obtain me & laïllie served retoured infeft & seased in ye lands & oy* reëixe above .... neirest and laïll air to my said deceist broy* be the immediat laïll se .......... and for y* effect to raise breives cause proclaime & serve ye samen and to d .......... thing neidfull & requisit y*anent and als y*efer with power t seally as s* is to resigne renunce surrender simplier ove .... then & then as now I for me & my abowrth be thir p* simplier overgives & delvery all and hail the saids landis the maner place houis biggins yeards orchards p* pendic hail the foïrïs* lands of Lundies Easter & Wester ptis pend ... les & ptinentes of the samen abovspe to ............ p* ............ (Signed on Margin) GEORG

Is that in your Hand a correct Copy of that Deed ?
It is.

The same was delivered in.

Sir Harris Nicolas stated, That he would show that David Home, Portioner of North Balquhumzie, and David Home the Father and John Home the Brother of Christian Home, Spouse of Patrick Flockhart Fear of Fernknoors, and George Home of Brechin, were Cadets of Argyat, by producing the Will of Christian Home, dated 6th December 1620, and confirmed in February 1624, in which such Individuals were referred to.

Mr. Bell submitted, That this was not relevant to the Case, not appearing to be connected with the Members of this Family.

The Counsel were informed, That such Document could not be received, unless there was Evidence to connect it with the Family.

Sir Harris Nicolas withdrew this Document, and stated, That he would produce an examined Office Copy of an Obligation by Harry Home of (103.5.)

Argaty

5 T
Mr. W. Fraser.  

Argaty to "Elspet Home laud dochter to umq' George Home citiner of Brechin."

Mr. Bell submitted, That this was subject to the same Objection.

The Counsel being asked whether there was other Evidence to connect George Home with the Argaty Family, stated, That he was not prepared at present with Evidence to that Effect, but that he might be at a future Day.

(By a Lord to Mr. Fraser.) Is that for a pecuniary Consideration? Yes; it is a Bond for Money lent.

The Counsel were informed, That this appeared to be Evidence, subject to Observation hereafter, but that it was desirable that the Case should not be unnecessarily incumbered with Matters that were not material.

Mr. Kelly stated, That he conceived the Document would by further Evidence be rendered material.

The same was read as follows:

Reg* of Deeds vol. 515.

Vigesimo quarto Septembris 1638.

In ùnce of the lordis of counsall compeirit m' James Millar advocat as pòr speciallie constituif for Harie Home of Ardgate and gauie in the obligation underwrin sub' &c. q'of the tenor follows  I Harie Home of Ardgate be thir ùntis grantis me to haue instantlie borrowit and receawit reallie and with effect from the handis of Elspet Home laud dochter to umq' George Home citiner of Brechin the sowme of tua hundreth fiftie four ùntis visual money of Scotland converted be me to the outred and performance of certane my vrgent and necess' effaires tending to my proper use utilitie and profeit q'of I hauld me well content satsifeit and payit and for me my aires ex'ònsers and simpliciter dischairges the said Elspet Home her aires and ex' aires with all vtheres whom it effaires therof for ever renunecand the exception of not naùrat mòe and all vtheres objectiones of the law in the contrar and theryfor I be the tenor heirof faithfully bindis and obliì me my aires ex* succe's to my landis and heritages and intromittors with my goddes and geire q'cumewer to thankfullie content pay and deliever agayne to the said Elspet Home hir aires ex* or ašñayes or to anie vther q'some' haueand this my band the abow nameit sowme sòwme of twa hundreth the fufite four ùntis mòe abow spèit betuix the daft heirof and the feist and ùme off M'times nixtocomie in this instant zeire of God J=vʒ. threttie seavin zeires but langer delay and faltzieing sua in pay' therof I obliì me and my forsaides to content and pay to the said Elspet Home and hir forsaides by and attour the sowme abowwrın and togithether with the sowme of fufite pundis mòe forsaid expreslie liquidat and convenit vpoñ be thir ùntis for cost skaith damage enters and expens to be susteaned therthrow all remead of law secludit and for the mair secu

6 ritie
ritie I am content & consentis that thir ðntis be inßit and regarð in the
books of counsal and session and decernit to receau executorialles of
hornelng vpone ane simple charge of sex dayes onlie poynding and ward-
ing the ane but prejudice of the vther and to that effect constitutes
m' James Millar conis and seuerallie my þor promitteð de rato &c. In
witness q'of I haue sub' thir ðnts ðrin be John Ramsay noþ publik at
Ed' the nynt day of Julij the zeire of God Jnvid. threttie seavin zeieres
befoir thir witnesses Hare Dow of Arrowhall and David Gonie ðvito to
ane noble earle Dauid earle of Suthesk. Sic sub H. HOME.
H. Dow witness DAVID GOUNIE witness.

Extracted from the Records in Her Majesty's General Register
House, upon this and the Two preceding Pages of stamped
Paper, by me One of the Keepers of these Records, having
Commission for that Effec from the Lord Clerk Register.
GEO. ROBERTSON.

Do you produce an examined Copy of that Document?
I do.

The same was delivered in.

Mr. Kelly stated, That he was not prepared to proceed further with
his Case until the Agent for Sir Hugh Hume Campbell should have
had an Opportunity of examining the Deeds relating to the Argaty
Family in the Possession of the Claimant.

Mr. Kelly stated, That General Home, who was alleged to have met
with Two Descendants of the Homes in America, was unfortunately at
the advanced Age of Eighty-six, and utterly unable to come up to give
Evidence, he not having left his Home for Three Years.

The Witness was directed to withdraw.

The Counsel were directed to withdraw.

Proposed to adjourn this Committee sine Die;

Accordingly,

Adjourned sine Die.